WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

/s/ Crane C. Hauser
Chief Counsel
Internal Revenue Service

OF COUNSEL:

HENRY C. STOCKELL, JR.
Regional Counsel

PAUL J. WEISS, JR.
Assistant Regional Counsel
Internal Revenue Service
Post Office Box 838
Greensboro, North Carolina

[fol. 14]

BEFORE THE TAX COURT OF THE UNITED STATES

WASHINGTON

September 20, 1962

149
Docket No. 2131-62

HOWE A. STIDGER, ET UX, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF FILING OF MOTION AND CALENDARING THEREOF FOR HEARING AS INDICATED—served September 21, 1962

You are hereby notified that the petitioner on September 17, 1962 filed a motion in the above-entitled case,

Supreme Court of the United States

OCTOBER TERM, 1966

No. 173

COMMISSIONER OF INTERNAL REVENUE,
PETITIONER

vs.

HOWE A. STIDGER, ET UX.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Original	Print
Proceedings before the Tax Court of the United States		
Docket entries	A	1
Petition	1	3
Exhibit A—Notice of Deficiency Statement	5	8
Answer	9	9
Notice of filing of motion	14	10
Notice setting case for trial	15	12
Minutes of proceedings	16	14

a copy of which motion is enclosed herewith, to change place of trial.

If you file an original and four conformed copies of a notice of objection thereto on or before October 10, 1962 specifically requesting hearing thereon, a copy of which will forthwith be served upon the opposite party, that motion will be calendared for hearing at Washington, D. C., in Courtroom No. 2, Constitution Avenue at 12th Street, N. W., at 10:00 A.M., on October 24, 1962, in which event this notice constitutes also a notice of hearing on that date.

If such notice and request is not received from you by the date specified for its filing, the Court will act upon the motion in its own discretion without hearing.

Your attention is called to the provisions of Rule 27 (a) (2) with regard to personal appearance at hearings on motions.

By direction of the Court.

/s/ Howard P. Locke
Clerk of the Court

To:

Howe A. and Betty M. Stidger
2137 Yorkshire Road
Sacramento 15, Calif.

Form 43-B
Nov. 1960

[fol. A]

BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 2131-62

Class

DOCKET ENTRIES

HOWE A. STIDGER AND BETTY M. STIDGER, 2137 Yorkshire Road, Sacramento 15, Calif., PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

APPEARANCES FOR PETITIONER:

NAME

ADDRESS

Date Month Day Year	Filings and Proceedings
June 18, 1962	PETITION FILED: FEE PAID June 18, 1962. Served June 14, 1962.
July 31, 1962	PETR'S CHANGE OF ADDRESS filed. Served Aug. 1, 1962.
July 31, 1962	ANSWER filed by resp. Served Aug. 1, 1962.
July 31, 1962	REQUEST by resp. for trial at Greensboro, N. C. Action GRANTED Aug. 1, 1962; Served Aug. 1, 1962.
Sept. 17, 1962	NOTICE of change of address filed by petr. Served Sept. 19, 1962.
Sept. 17, 1962	MOTION by petr. to change place of trial to San Francisco, California. Action GRANTED (Without Objection) October 1, 1962; Served Oct. 3, 1962.
Sept. 20, 1962	NOTICE of filing of petr. motion to change place of trial and hearing on October 24, 1962 if objection filed by October 10, 1962. Served Sept. 21, 1962.
Oct. 1, 1962	MOTION by petr. to change place of trial to San Francisco, California—GRANTED.

Date Month Day Year	Filings and Proceedings
Feb. 20, 1963	NOTICE of trial June 3, 1963, San Francisco, Calif. Served Feb. 20, 1963.
June 3, 1963	TRIAL at San Francisco, California, by Judge Arundell. Stip. of Facts with joint exhibits filed. Orig. Briefs due July 18, 1963. Reply Briefs due August 19, 1963.
	UNDER SUBMISSION—JUDGE ARUNDELL
[fol. B]	
June 14, 1963	TRANSCRIPT of proceedings of June 3, 1963 received.
July 17, 1963	ORIGINAL BRIEF filed by petitioners. Served Jul 19, 1963.
July 18, 1963	ORIGINAL BRIEF filed by respondent. Served Jul. 19, 1963.
Aug. 19, 1963	REPLY BRIEF filed by petitioners. Served Aug. 20, 1963.
Aug. 19, 1963	REPLY BRIEF filed by respondent. Served Aug. 20, 1963.
Sept. 3, 1963	FINDINGS OF FACT AND OPINION filed, Judge Arundell. Served Sep. 3, 1963. Decision will be entered for the respondent.
Sept. 3, 1963	DECISION ENTERED, Judge Arundell. Served Sep. 3, 1963.
	APPELLATE PROCEEDINGS
Dec. 4, 1963	PETITION FOR REVIEW by USCA, 9th Circuit, filed by Petrs. (Postmark date—Sacramento, Cal. —Dec. 2, 1963).
Dec. 4, 1963	PROOF OF SERVICE of petition for review on Resp. filed.
Dec. 27, 1963	DESIGNATION OF CONTENTS OF RECORD filed.
Dec. 27, 1963	PROOF OF SERVICE of Designation of Contents filed.
Dec. 30, 1963	ORDER extending time to March 3, 1964 to file record. Served Dec. 30, 1963.

BEFORE THE TAX COURT OF THE UNITED STATES

[File Endorsement Omitted]

Docket No. 2131-62

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

PETITION— Filed June 13, 1962

The above named petitioners hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency AP:Gbr:ERA dated March 15, 1962, and as the basis for our case alleges as follows:

1. The petitioners are individuals with principle residence now at Apartment B-21, Marine Corps Air Station, Cherry Point, North Carolina. The return for the period here involved was filed with the District Director of Internal Revenue, Greensboro, North Carolina.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioners on March 15, 1962.

3. The deficiencies as determined by the Commissioner are in income taxes for the calendar year 1958, in the amount of $180.10 of which approximately $146.30 is in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

a. The Petitioners principle place of employment during calander 1958 was Iwajuni, Japan.

b. The Petitioners were considered as not being away from home for federal income tax purposes.

c. The Petitioners expenses incurred for meals while temporarily away from home constitute personal expenses.

5. The facts upon which the petitioners relies as the basis of this case are as follows:

a. The wage earning petitioners place of employment was The United States of America. His duties during 1958 were temporarily away from his principle place of employment. Marine Corps Orders established the length of tours away from home as fourteen (14) months duration (hence a temporary period, and its termination could be foreseen within a [fol. 2] fixed and reasonable short period). Marine Corps Orders also forbid the establishment of a home or domicile during this duty, even at the petitioners own expense. For these reasons, the Far East was a place of temporary employment. This is further supported by the fact that the wage earning petitioner departed from Marine Corps Air Station, El Toro (Santa Ana), California on October 1, 1957 and returned to the Marine Corps Air Station, El Toro (Santa Ana), California on December 19, 1958. During his absence from home he served at the Marine Corps Air Facility, Iwakuni, Japan, Naval Air Station, Atsugi, Japan, twice at the Naval Air Facility, Naha Air Force Base, Okinawa, and once at the Naval Air Station, Cubi Point, Phillipine Islands.

b. During the period January 1, 1958 through December 31, 1958 the wage earning petitioners location changed eleven (11) times. During these changes his home was maintained at Santa Ana, California. The petitioners claim that the United States (California) was the principle place of employment, hence home, therefore the wage earner was in fact, temporarily away from home.

c. The wage earning petitioner being temporarily away from home, attached to an Air Squadron away from home base is authorized to deduct from gross income the entire amount of mess bills. This deduction need not be offset by basic subsistance allowances.

Wherefore, the petitioners pray that this court, may try this case and determine that the $650.00 deduction from gross income claimed for meals while temporarily away from home, be allowed.

/s/ Howe A. Stidger

/s/ Betty M. Stidger
Apt. B-21, MCAS
Cherry Point, N. Carolina

[fol. 3]

[Duly Sworn to by Howe A. Stidger and Betty M. Stidger. Jurats Omitted in Printing]

[fol. 4]

EXHIBIT "A" TO PETITION.

NOTICE OF DEFICIENCY

U. S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
OFFICE OF REGIONAL COMMISSIONER
APPELLATE DIVISION, ATLANTA REGION
P. O. Drawer 838
Greensboro, North Carolina

MAR 15, 1962

In Reply Refer to
AP:Gbr:ERA

Taxable Year Ended	Deficiency
12/31/58	$180.10

Mr. Howe A. Stidger and
Mrs. Betty M. Stidger
Husband and Wife
MOQ B-21
Cherry Point, North Carolina

Dear Mr. and Mrs. Stidger:

In accordance with the provisions of existing internal revenue laws, notice is given that the determination of your income tax liability for the above-noted taxable year(s) discloses a deficiency (or deficiencies) in the amount(s) shown above. The attached statement shows the computation of the deficiency or deficiencies.

IF YOU AGREE to this determination, please sign the enclosed agreement, Form 870, and return it promptly to this office. An addressed envelope is enclosed for this purpose. The signing and filing of this agreement will permit an early assessment of the deficiency or deficiencies and will limit the accumulation of interest.

IF YOU DO NOT AGREE, and do not sign and return the enclosed form, the deficiency or deficiencies will be assessed for collection, as required by law, upon the

expiration of ninety days from the date of this letter, unless within that time you contest this determination in the Tax Court of the United States by filing a petition with that Court in accordance with its rules, a copy of which may be obtained by writing to its Clerk, Box 70, Washington, 4, D. C.

Very truly yours,

MORTIMER M. CAPLIN
Commissioner

By /s/ James F. Paris
JAMES F. PARIS
Associate Chief

Enclosures:

Statement
Agreement, Form 870
Addressed envelope

[fol. 5]

ENCLOSURE TO EXHIBIT A

STATEMENT

Howe A. Stidger and Betty M. Stidger, Husband and Wife
MOQ B-21, Cherry Point, North Carolina

Address on Return:
30 Fike Drive, Havelock, North Carolina

Year	Deficiency
1958	$180.10

Adjustment to Income

Tazable income as disclosed by return		$3,855.00
Unallowable deductions and additional income:		
(a) Expenses for meals, lodging and laundry	$800.00	
(b) Medical expenses	31.80	831.80
Taxable income adjusted		$4,686.80

Explanation of Adjustments

(a) The duduction of $800.00, claimed for meals of $650.00 and for lodging and laundry of $150.00, has been disallowed because it has not been established that the amount claimed constitutes an ordinary and necessary business expense.

(b) As the result of the increase in adjusted gross income as shown in item (a), the deduction for medical expenses allowable is adjusted, computed as follows:

Adjusted gross income as disclosed by return	$7,445.00
Add: Expenses disallowed, item (a)	800.00
Adjusted gross income as corrected	8,245.00
Cost of medicines and drugs	$ 95.00
Less: 1% of $8,245.00	82.45
Balance	12.55
Other medical and dental expenses	338.00
Total	$ 350.55
Less: 3% of $8,245.00	247.35
Medical expense deduction allowable	$ 103.20
Claimed on return	135.00
Excess disallowed	$ 31.80

Computation of Tax

Taxable income adjusted	$4,686.80
Income tax liability	951.10
Liability as disclosed by return, Acct. # CR 246416	771.00
Deficiency in income tax	$ 180.10

[fol. 9]

BEFORE THE TAX COURT OF THE UNITED STATES

[File Endorsement Omitted]

[Title Omitted]

ANSWER—Filed July 31, 1962

THE RESPONDENT, in answer to the petition filed in the above-named case, admits and denies as follows:

1 and 2. Admits the allegations set forth in paragraphs 1 and 2 of the petition.

3. Admits that the deficiency as determined by the Commissioner is in income tax for the taxable year 1958 in the amount of $180.10. Denies the remaining allegation set forth in paragraph 3 of the petition.

4. a. to c. Denies the allegations of error set forth in subparagraphs a to c, inclusive, of paragraph 4 of the petition.

5. a. Admits that petitioner Howe A. Stidger departed from Marine Corps Air Station, El Toro (Santa Ana), California, on October 1, 1957, and returned to the Marine Corps Air Station, El Toro (Santa Ana), California, on December 19, 1958, and that during his absence he served at the Marine Corps Air Facility, Iwakuni, Japan. Denies the remaining allegations set forth in subparagraph a of paragraph 5 of the petition.

[fol. 10] b. & c. Denies the allegations set forth in subparagraphs b and c of paragraph 5 of the petition.

6. Denies generally each and every allegation of the petition not hereinabove specifically admitted, qualified or denied.

[fol. 15]

BEFORE THE TAX COURT OF THE UNITED STATES

WASHINGTON

February 20, 1963

149
Docket No. 2131-62

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Trial On: June 3, 1963

Trial At: Customs Courtroom
United States Appraisers Building
630 Sansome Street
San Francisco, California

NOTICE SETTING CASE FOR TRIAL

TAKE NOTICE that the above-entitled case is set for trial before a Division of the Tax Court of the United States as indicated above.

The calendar for that Session will be called at 10:00 A.M. on the date indicated and you will be expected to answer the call at that time and be prepared when the case is reached for trial. Failure to appear will be taken as cause for dismissal in accordance with Rule 27(b) (3) of the Court's Rules of Practice.

You are expected to be familar with the Court's Rules of Practice in all other respects.

Your attention is called particularly to Rule 31(b) which requires that the parties stipulate facts and evidence to the fullest possible extent prior to the call of the

calendar. You should confer with your adversary promptly in order to comply with that rule.

/s/ Howard P. Locke
Clerk of the Court.

Ex parte motions for continuance of trial, filed 30 days or less prior to the first day of the Session, will be calendared for hearing at calendar call at the Session unless the Court, in its discretion, directs otherwise in exceptional circumstances.

To: Howe A. Stidger and
Betty M. Stidger
2137 Yorkshire Road
Sacramento 15, California

[fol. 16]

(SEAL)

BEFORE THE TAX COURT OF THE UNITED STATES

MINUTES OF PROCEEDINGS

Title of case HOWE A. STIDGER AND BETTY M. STIDGER Docket No. 2131-62

Date called ..... Place .....
Transcript Ordered .....

Date of Trial June 3, 1963 Place SAN FRANCISCO Transcript Ordered Yes

Judge C. R. ARUNDELL Reporter John E. Lewis

Counsel For Petitioner Howe A. Stidger, Pro Se
For Respondent Arthur P. Generaux

Proceedings and Action: SUBMITTED

Filed during Session (and action if necessary) Stipulation of facts and Joint Exhibit 1-A attached.

Original briefs: Petitioner July 18, 1963 Respondent July 18, 1963

Reply briefs: Petitioner August 19, 1963 Respondent August 19, 1963

Time consumed in trial 35 min. Signed /s/ James W. Kemper JAMES W. KEMPER, *Deputy Clerk.*

WITNESSES

For Petitioner	For Respondent
Howe A. Stidger	(None)

EXHIBITS

Petitioner's (Number and describe)

2-photostat re: discharge USMC
3- " " " "
4-copy of document

Respondent's (Letter and describe)

(None)

[fol. 17]

BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 2131-62

[File Endorsement Omitted]

[Title Omitted]

STIPULATION OF FACTS—Filed June 3, 1963

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party may introduce other and further evidence not inconsistent with the facts herein stipulated.

1. Petitioners filed their 1958 joint income tax return with the Director of Internal Revenue at Greensboro, North Carolina. Said return is to be received in evidence as Exhibit 1-A.

2. On September 4, 1962, petitioners' address became 2137 Yorkshire Road, Sacramento 15, California.

[fol. 18] 3. Petitioner-husband, hereinafter referred to as petitioner unless otherwise designated, was a Captain in the United States Marine Corps during the taxable year 1958. As of that time, he had served in the Corps for many years.

4. On October 1, 1957, petitioner was assigned to duty in the far east with the First Marine Aircraft Wing, a part of Aircraft Fleet Marine Force, Pacific, with administrative headquarters at Marine Corps Air Station, El Toro (Santa Ana) California.

5. Dependents of personnel assigned to duty with the Aircraft Fleet Marine Force, Pacific, in the far east, were prohibited by Marine Corps orders to accompany said personnel or establish homes in the far east.

6. On October 1, 1957, petitioner departed from El Toro, California. Petitioner's itinerary from October 1957 to December 1958 was as follows:

1 Oct 57 to 20 Feb 58—	Departed MCAS El Toro, Calif., traveled to, and duty at Iwakuni, Japan
21 Feb 58 to 7 Mar 58—	Cubi Point, Phillipine Islands
8 Mar 58 to 19 Apr 58—	Iwakuni, Japan
20 Apr 58 to 23 May 58—	Naha AFB, Okinawa
24 May 58 to 10 Aug 58—	Iwakuni, Japan
11 Aug 58 to 29 Aug 58—	Yokosuka, Japan
30 Aug 58 to 1 Sep 58—	Iwakuni, Japan

[fol. 19]

2 Sep 58 to 19 Sep 58—	San Diego, Calif.
20 Sep 58 to 25 Sep 58—	Iwakuni, Japan
26 Sep 58 to 10 Oct 58—	Naha AFB, Okinawa
11 Oct 58 to 14 Dec 58—	Iwakuni, Japan
15 Dec 58 to 19 Dec 58—	Travel to MCAS El Toro, Calif.

7. Throughout the entire year 1958, petitioner received a housing allowance of approximately $102.50 per month and subsistence allowance of approximately $42.50 per month.

8. During the periods that petitioner was located at Iwakuni, Japan, he received free lodging in addition to his housing and subsistence allowance but was not in travel status and he therefore did not receive free meals.

9. During the year 1958, petitioner was placed in travel status for forty-nine days and, in addition to his normal housing and subsistence allowance, his expenses for meals and lodging were reimbursed. Petitioner does not claim travel expenses for the forty-nine days that he received reimbursement for the costs of meals and lodging.

10. For the taxable year 1958, petitioner claimed travel expenses as follows:

Meals	$650.00
Lodging and Laundry	150.00
Total	$800.00

[fol. 20] Petitioner now concedes that the sum of $150.00 claimed as lodging and laundry was in error in that lodging was furnished and the remaining portion of the $150.00 was of a personal nature. Therefore, the only issue remaining before the Court is whether or not petitioners are entitled to a deduction for travel expenses consisting of meals while at Iwakuni, Japan, in the amount of $650.00 for the taxable year 1958.

/s/ Howe A. Stidger
Petitioner

/s/ Betty M. Stidger
Petitioner

/s/ Crane C. Hauser
Chief Counsel
Internal Revenue Service

[fol. 21]

JOINT EXHIBIT "1-A" TO STIPULATION OF FACTS

Post-Refund Audit

O.A.

Form 1040 — Treasury Department — Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN—1958

For the Calendar Year 1958 or Other Taxable Year Beginning 1 JAN 1958, 1958 Ending 31 DEC 1958

(PLEASE TYPE OR PRINT)

Name: HOWE A. AND BETTY M. STIDGER

(If this is a joint return of husband and wife, use first names and middle initials of both)

Home address: 30 FIKE DRIVE

(Number and street or rural route)

HAVELOCK, N. CAROLINA

(City, town, or post office) (Postal zone number) (State)

OR 246416

Your Social Security Number	Occupation	Wife's Social Security Number	Occupation
234 30 8151	U.S. MARINE	UNKNOWN	HOMEMAKER

If Income Was All From Salaries and Wages, Use Pages 1 and 2 Only. See Page 3 of the Instructions.

Exemptions

1. Check blocks which apply. Check for wife if she had no income or her income is included in this return.
   - (a) Regular $600 exemption ..... ☑ Yourself ☑ Wife
   - (b) Additional $600 exemption if 65 or over at end of taxable year. ☐ Yourself ☐ Wife
   - (c) Additional $600 exemption if blind at end of taxable year. ☐ Yourself ☐ Wife

   Enter number of exemptions checked → 2
2. List first names of your children who qualify as dependents; give address if different from yours. GLEN LEE; DAVIN DEAN — Enter number of children listed → 2
3. Enter number of exemptions claimed for other persons listed at top of page 2 .....
4. Enter the total number of exemptions claimed on lines 1, 2, and 3 4

Income

5. Enter all wages, salaries, bonuses, commissions, tips, and other compensation before payroll deductions (including any excess of expense account or similar allowance paid by your employer over your ordinary and necessary business expenses. See instructions, pp. 5-6.)

Employer's Name	Where Employed (City and State)	(a) Wages, etc.	(b) Income Tax Withheld
U.S. MARINE CORPS	MCAS CHERRY POINT N.C.	$ 8545 —	$ 1046 40
LESS EXCLUDABLE EXPENSES INCIDENTED TO RETIREMENT		800 —	
	Enter totals here →	$ 7745 —	$ —

6. Less: Excludable "Sick Pay" in line 5 (See instructions, page 7. Attach required statement.) ... 300 —
7. Balance (line 5 less line 6) ..... $ 7445 —
8. Profit (or loss) from business from separate Schedule C .....
9. Profit (or loss) from farming from separate Schedule F .....
10. Other income (or loss) from page 3 (dividends, interest, rents, pensions, etc.) .....
11. ADJUSTED GROSS INCOME (sum of lines 7, 8, 9, and 10) ..... $ 7445 —

If either you or your wife had more than one employer and the social security tax (FICA) withheld from wages exceeded $94.50, see instructions, page 5.

Unmarried or legally separated persons qualifying as "Head of Household," see instructions, page 7, and check here ☐

Widows and widowers with dependent child who are entitled to the special tax computation, see instructions, page 8, and check here ☐

Tax due or refund

12. Tax on income on line 11. (If line 11 is under $5,000, and you do not itemize deductions, use Tax Table on page 16 of instructions to find your tax and check here ☐. If line 11 is $5,000 or more, or if you itemize deductions, compute your tax on page 2 and enter here the amount from line 9, page 2). $ 771 —

If income was all from wages, omit lines 13 through 16

13. (a) Dividends received credit from line 5 of Schedule J ..... $
    (b) Retirement income credit from line 12 of Schedule K ....
14. Balance (line 12 less line 13) .....
15. Enter your self-employment tax from separate Schedule C or F .....
16. Sum of lines 14 and 15 .....
17. (a) Tax withheld (line 5 above). Attach Forms W-2, Copy B ..... $ 1046 40
    (b) Payments and credits on 1958 Declaration of Estimated Tax (See page 8, instructions.) ●
    District Director's office where paid _____
18. If your tax (line 12 or 16) is larger than your payments (line 17), enter the BALANCE DUE here → $
    Pay in full with this return to "Internal Revenue Service." If less than $1.00, file return without payment.
19. If your payments (line 17) are larger than your tax (line 12 or 16), enter the OVERPAYMENT here → $ 275 40
    If less than $1.00, the overpayment will be refunded only upon application.
20. Amount of line 19 to be: (a) Credited on 1959 estimated tax $ _____ (b) Refunded $ 275.40

Did you receive an expense allowance or reimbursement, or charge expenses to your employer? ☐ Yes ☑ No (See page 6, instructions)
If "Yes," did you submit an itemized accounting of expenses to your employer? _____ ☐ Yes ☑ No

County in which you live: CRAVEN

Is your wife (husband) filing a separate return for 1958? ☐ Yes ☑ No If "Yes," enter her (his) name.

Do you owe any Federal tax for years before 1958? ☐ Yes ☑ No

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return. If the return is prepared by a person other than the taxpayer, his declaration is based on all the information relating to the matter required to be reported in the return of which he has any knowledge.

Howe A. Stidger 13 APR 1959
Taxpayer's signature and date

Betty M. Stidger Apr 13 1959
(If this is a joint return, BOTH HUSBAND AND WIFE MUST SIGN) (Wife's signature and date)

(Signature of preparer other than taxpayer) (Address) (Date)

EXHIBIT NO. 21

18

[fol. 22]

Form 1040—1958 **EXEMPTIONS FOR PERSONS OTHER THAN YOUR WIFE AND CHILDREN** Page 2

Name	Relationship	Months lived in your home. If born or died during year also write "B" or "D"	Did dependent have gross income of $600 or more?	Amount YOU furnished for dependent's support. If 100%, write "All"	Amount furnished by OTHERS including dependent
				$	$

Enter on line 3, page 1, the number of exemptions claimed above.
→ If an exemption is based on a multiple-support agreement of a group of persons, attach information described on page 5 of instructions.

ITEMIZED DEDUCTIONS—IF YOU DO NOT USE TAX TABLE OR STANDARD DEDUCTION

If Husband and Wife (Not Legally Separated) File Separate Returns and Use Itemized Deductions, the Other Must Also Itemize
State to whom paid. If necessary write more than one item on a line or attach additional sheets. Please put your name and address on any attachments.

Contributions	CHARITABLE ORGANIZATIONS, RED CROSS, POLIO, MULTI SCLEROSIS, UNITED FUND, SALVATION ARMY, NAVY HEALTH DRIVE, TB SEALS	100 —
	RELIGIOUS ORGANIZATIONS	25 —
	Total paid but not to exceed 20% of line 11, page 1, except as described on page 8 of instructions....	$ 125 —
Interest	COLWELL CO. WILSHIRE BLVD, LOS ANGELES, CALIF	520 —
	Total interest	520 —
Taxes	REAL ESTATE 1350 S. HARBOR WAY, SANTA ANA, CALIF	201 —
	CAR LICENSE CALIF	41 —
	CALIF SALES TAX	84 —
	GASOLINE TAX 400 gl. @ .06/gal	24 —
	Total taxes	350 —
Medical and dental expense (65 or over, see instructions, page 10)	Submit itemized list. Do not enter any expense compensated by insurance or otherwise	
	1. Cost of medicines and drugs IN EXCESS of 1 percent of line 11, page 1 ..... $ 20.55	
	2. Other medical and dental expenses 338.00	
	3. Total ..... $ 358.55	
	4. Enter 3 percent of line 11, page 1 ..... 223.35	
	5. Allowable amount (excess of line 3 over line 4). (See instructions, page 10, for limitations)	135 — 20
Other Deductions (See page 10 of instructions and attach information required)	UNIFORM ACCESSORIES	60 —
	Total	60 —
TOTAL DEDUCTIONS (Enter here and on line 2 of Tax Computation, below)		$ 1190 —

TAX COMPUTATION—IF YOU DO NOT USE THE TAX TABLE

1. Enter Adjusted Gross Income from line 11, page 1	$ 7445 —
2. If deductions are itemized above, enter total of such deductions. If deductions are not itemized and line 1, above, is $5,000 or more: (a) a married person filing a separate return enter $500, (b) all others enter 10 percent of line 1, or $1,000, whichever is smaller	1190 —
3. Balance (line 1 less line 2)	6255 —
4. Multiply $600 by total number of exemptions claimed on line 4, page 1	2400 —
5. TAXABLE INCOME (line 3 less line 4)	3855 —
6. Tax on amount on line 5. Use appropriate tax rate schedule on page 15 of instructions. Do not use Tax Table on page 16	771 —
7. If you had capital gains and the alternative tax applies, enter the tax from separate Schedule D	
8. Tax credits. If you itemized deductions, enter: (a) Credit for income tax payments to a foreign country or U. S. possession (Attach Form 1116) ..... $ ____ (b) Tax paid at source on tax-free covenant bond interest and credit for partially tax-exempt interest .... (c) Total ..... Enter here →	
9. Enter here and on line 12, page 1, the amount shown on line 6 or 7 less amount claimed on line 8(c) ...	$ 771 —

22

19

[fol. 23]

ATTACHMENT TO INCOME TAX RETURN 1958

HOWE A. and BETTY M. STIDGER

STATEMENT: Excludable Expenses from Gross Pay

Excludable expenses claimed for duty with U. S. Marines, Aviation Fleet Marine Forces, Pacific. Assigned duties away from home for over 10 months, during calendar 1958

Meals (Closed Mess When Available)	$65.00 per month x 10 =	$650.00
Lodging (BOQ's) and Laundry	$15.00 per month x 10 =	$150.00
Total Excludable Expenses Claimed		$800.00

/s/ Howe A. Stidger

STATEMENT: Excludable Sick Pay

Claimed for period 11 Aug. 1958 through 29 Aug. 1958. Hospitalized for surgery (hernia) average weekly income $165.00. Maximum allowance of $100.00 per week claimed.

3 Weeks @ $100 Total Deductible $300.00

/s/ Howe A. Stidger

[fol. 24]

ATTACHMENT 1958 INCOME TAX

HOWE A. and BETTY M. STIDGER

Medical and Dental Expenses

Cost of Medicine

Pence Pharmacy, So. Bristol, Santa Ana, Calif.	$ 70.00
Bristol Drug, 4th & N. Bristol, Santa Ana, Calif.	25.00
Total	$ 95.00
1% of Line 11	74.45
	$ 20.55

Other Medical

Dr. Underwood DDS, Newport Beach, Calif.	$ 45.00	
Dr. Bell MD, N. Broadway, Santa Ana, Calif.	150.00	
Dr. Imagawa MD, S. Broadway, Santa Ana, Calif.	143.00	
		338.00
Total		358.55
Less 3% of Line 11		223.35
Total Medical Deductible		$135.20

BLANK

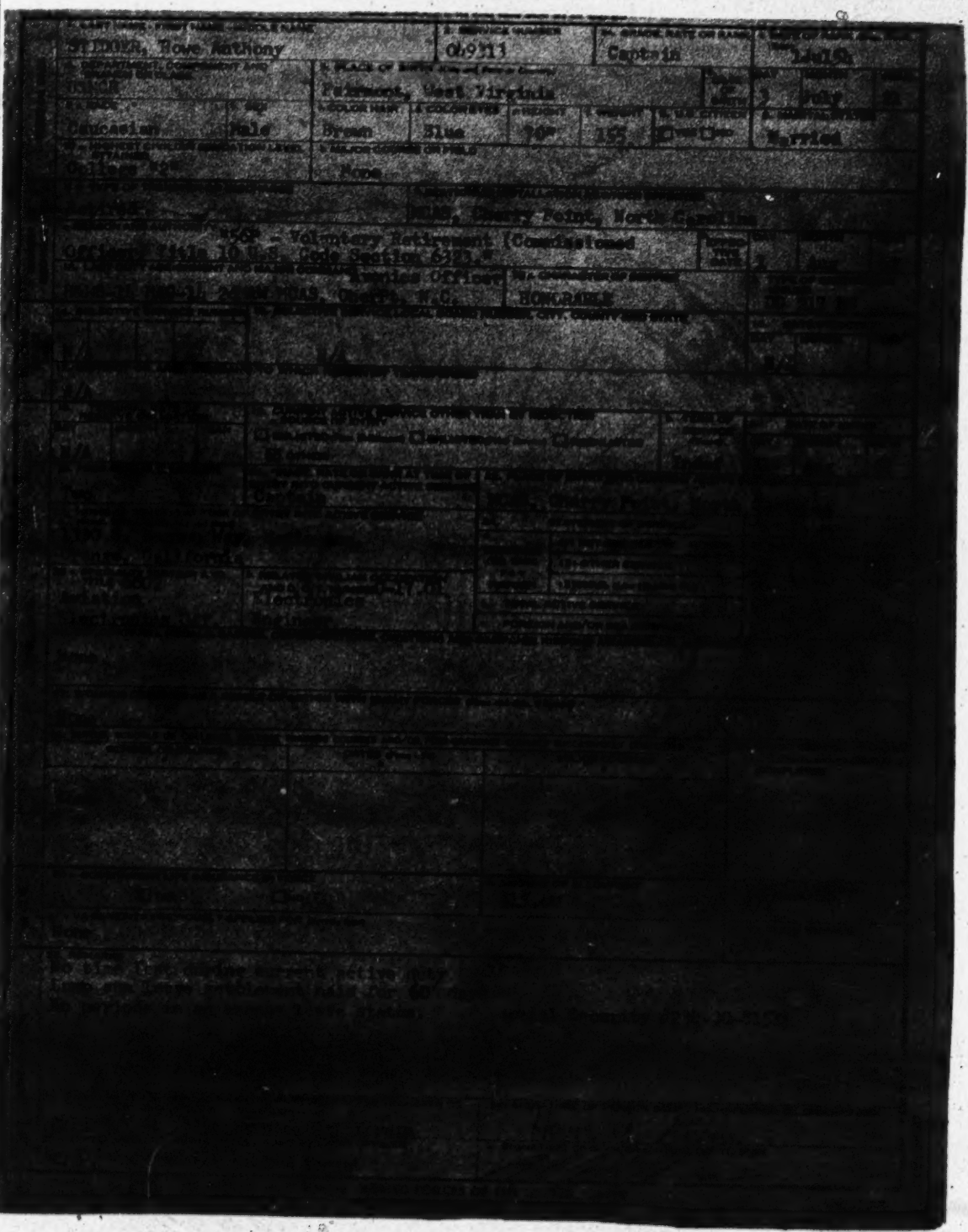
PAGE

BLANK

PAGE

[fol. 26]

PETITIONER'S EXHIBIT 3



[fol. 27]

PETITIONER'S EXHIBIT 4

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
Washington 25, D.C.

DIRECTIVES CONTROL COPY
(Return to ABX)

MCO 1300.8B
AO1-kb
1 Jul 1958

CANCELLED BY MCO 1300.8C

MARINE CORPS ORDER 13.00.8B Ch. 1

Subj: Overseas tours of duty and overseas movement of dependents.

Ref: (a) DOD Directive 1315.7 as modified 27 Aug 1957 (NOTAL)
(b) Para 7054 7105 and 7157 MarCorMan
(c) MCO 1752.1

1. *Purpose.* To establish overseas tours of duty in certain Marine Corps commands and activities located beyond the continental limits of the United States, and policies concerning overseas movement of dependents of Marine Corps personnel serving in these commands and activities.

2. *Cancellation.* MCO 1300.8A and MCO 1751.2A.

3. *Suspension.* Those portions of reference (b) which are in conflict with this order are hereby suspended pending revision.

4. *Definitions*

a. *Overseas Duty.* Military duty performed while assigned to a military installation or activity permanently located at a land station outside the continental limits of the United States.

b. *Tour Length.* Begins with the day of departure from the continental limits of the United States and

terminates with the day of return thereto on permanent change of station.

c. *Standard Tour.* The period of time established for duty at a specific location.

d. *Authorized Dependents.* Military dependents authorized by statute to travel overseas at government expense upon permanent change of station on their sponsor, and authorized by the appropriate military commander to be present in a military dependents status for the purpose of logistical support with his command.

e. *Unauthorized Dependents:*

(1) Military dependents not authorized government-expense travel.

(2) Military dependents entitled to government-expense travel who are present in the overseas area without military authorization.

f. *Acquired Dependents.* Military dependents acquired in an overseas area in accordance with existing regulations.

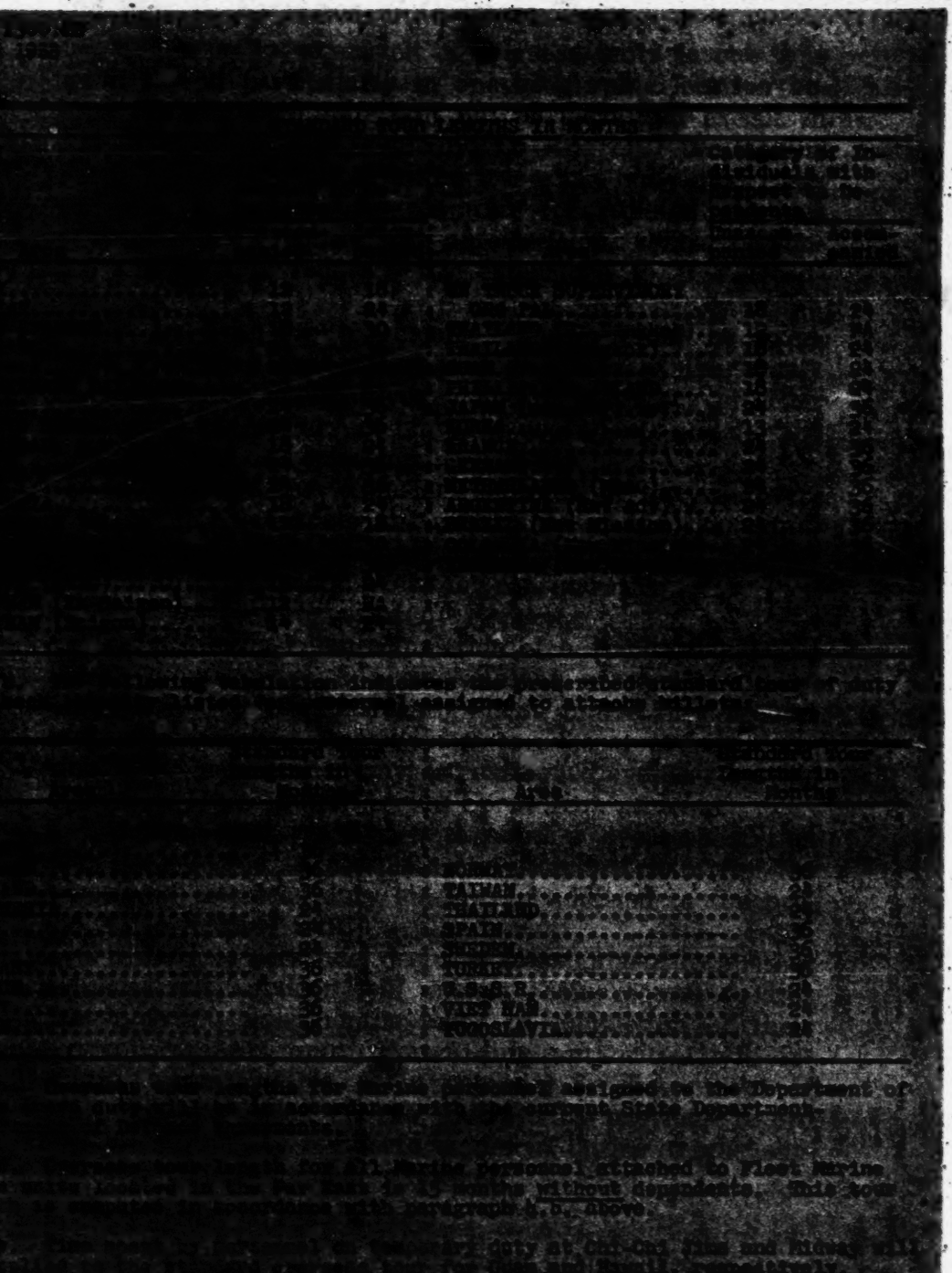
5. *Standard Tours of Duty.* Standard tours of duty for overseas areas and personnel stationed there are established as follows:

a. The below tabulation indicates the prescribed standard tour of duty for each locality listed, excluding personnel assigned to attache billets, State Department guard billets, and Fleet Marine Force units permanently assigned in the Far East:

BLANK

PAGE

[fol. 28]



BLANK

PAGE

[fol. 29] 6. *Extension of Overseas Tours*

a. Normally, extension of overseas tours in one type activity, and particularly in one geographic location beyond the standard tour will not be permitted except in case of hardship. The Commanding General, Fleet Marine Force Pacific is granted authority, when individual cases warrant, to extend overseas tour for enlisted Marines who voluntarily request such an extension. Officer personnel will submit requests for extensions to this Headquarters.

b. In granting extensions, caution must be exercised to insure that overseas tour dates expire evenly throughout the calendar year. This is necessary in order to provide for concurrent travel of dependents and for the timely arrival of replacements overseas.

c. Requests for extensions of tours of duty at overseas stations not under the cognizance of the Commanding General, Fleet Marine Force Pacific, will be forwarded to this Headquarters for consideration.

7. *Overseas Reassignment of Personnel*

a. Normally, upon completion of a standard tour, as listed in paragraph 5 above, Marine personnel will be ordered to CONUS for reassignment, unless they request and are authorized reassignment to another overseas station. Officer personnel may be reassigned overseas by this Headquarters to meet Marine Corps requirements.

b. Personnel reassigned to another overseas station will be required to complete the standard tour for the reassigned overseas duty station, in addition to the previously completed tour.

c. Marine personnel desiring reassignment to another overseas duty station will submit their request to this Headquarters five months prior to completion of their current overseas tour. Forwarding authorities will indicate, when possible, their approval or disapproval of such requests based on the individual's previous record and his suitability for performance of duties commensurate with the assignment requested.

8. *Miscellaneous Instructions*

a. Periods while in confinement, hospitalized as a result of own misconduct, or temporarily returned to the

United States in connection with a humanitarian problem, will not be counted as time served on the tour of duty, and the date of rotation will be adjusted accordingly.

b. The maximum combination of overseas tours and any extensions granted in accordance with paragraph 6 will not exceed a total of five years of continuous overseas service.

9. *Overseas Movement of Authorized Dependents*

a. Marine personnel whose unexpired term of service is less than the standard overseas tour with dependents for the area to which they are assigned, will not be authorized to move their dependents overseas at government expense, unless they voluntarily extend their term of service to permit completion of the prescribed overseas tour.

b. In addition to the requirement set forth in 9.a. above, dependents will not be sent overseas at government expense unless the sponsor has a minimum of twelve months remaining on his overseas tour after dependents arrive. After dependents arrive in the overseas area, the sponsor's tour length will be readjusted to the standard tour for the area, accompanied by dependents, as listed in paragraph 5.a.

c. Marine personnel who are required to extend or reenlist in order to receive authorization for moving their dependents overseas will accomplish such extensions or [fol. 30] reenlistments prior to having less than 14 months remaining on an accompanied overseas tour for the area.

d. When computing the overseas tour length for any area, the overseas tour commences from the date the sponsor departs the United States, whether his dependents travel concurrently or join him later.

10. *Overseas Movement of Unauthorized Dependents*

a. The basis for the decision as to authorizing dependents overseas is as follows:

(1) The adverse effect that the presence of dependents might have on a unit's mission, operational readiness, or combat capability.

(2) Existence of suitable dependents' support facilities for *all* married personnel.

(3) Standards of living and the general desirability of the area.

(4) Political climate obtaining in the country concerned.

b. The result of the evaluation of these factors is that members of Fleet Marine Force units assigned to the Far East, less subordinate units stationed in Hawaii, are not authorized to have their dependents accompany them or later join them in the Far East for the purpose of domicile. Furthermore, such members are not authorized to move their household effects or automobiles to this area. This policy is not to be construed as prohibiting the travel of dependents for visits to this area as bona fide tourists for a period not to exceed 60 days, providing such visits involve no expense to the U. S. Government and are duly authorized by the U. S. Department of State, and the government of the countries to be visited for tourist purposes only.

c. In the event that dependents elect to exercise this privilege at their own expense without Marine Corps authorization, such dependents who join their sponsors overseas will be furnished only those military services or privileges in the overseas area to which they are entitled by law. This is applicable to all dependents who do not have authorized military dependency status overseas. The military services or privileges to which these dependents are entitled by law are as follows:

(1) Burial in a national cemetary.

(2) Medical care as provided in the Dependents Medical Care Act.

d. In accordance with reference (a), unauthorized dependents are to be afforded utilization of post exchanges and commissaries in areas where these privileges are afforded authorized dependents.

e. Transportation of dependents who do not have authorized military dependent status overseas will not be scheduled on a space-requirement or space-available basis either to or from the United States.

11. *Acquired Dependents*

a. Acquired dependents will be provided those privileges which are commensurate with the grade and length of service of their sponsor. These grade and service criteria are as follows:

(1) Personnel of pay grade E-4 with four or more years of service, and above.

(2) Personnel of pay grade E-4 with less than four years of service, or below.

[fol. 31] b. Acquired dependents of personnel defined in a.(1) above will be afforded those privileges outlined in paragraph 4.f. of reference (c), except that personnel assigned to the Fleet Marine Forces in the Far East will not be authorized to occupy government quarters. In addition, these dependents will be authorized space-required transportation to the United States when their sponsors receive permanent change-of-station orders thereto.

c. Acquired dependents of personnel defined in a.(2) above will be afforded those privileges outlined in paragraph 4.f. of reference (c), not to include government quarters for personnel assigned to the Fleet Marine Forces Far East. These dependents will be authorized space-available transportation to the United States when their sponsors receive permanent change-of-station orders thereto.

12. *Overseas Station Allowances.* Overseas station allowances for dependents provided by Joint Travel Regulations will be paid only to sponsors who are entitled to government space-required transportation for their dependents and who are authorized to have their dependents in the area. Sponsors who may be currently receiving such allowance and who henceforth would not be entitled to receive them pursuant to this order, will continue to be paid such allowances until their current overseas tour is completed.

13. *Effective Date*

a. This order is effective 30 June 1958.

b. Marine personnel assigned overseas duty subsequent to the above date will perform overseas tours in accordance with this order.

c. Personnel who are currently overseas and who have completed more than one-half of the previous overseas tour for the area by 30 June 1958 will complete the overseas tour in effect at the time of their departure from the United States.

d. Personnel who are currently overseas and who have completed one-half or less of the previous overseas tour for the area will complete the overseas tours tabulated in paragraph 5, recomputed from their date of departure from CONUS.

e. Personnel reassignment after effective date of this order between overseas duty stations within Security Forces, Pacific and from Security Forces, Pacific to Fleet Marine Forces Pacific, or vice versa, will be in accordance with paragraph 7 of this order.

14. *Mobilization.* In event of mobilization, this order is automatically cancelled.

15. *Reserve Applicability.* This order is not applicable to the Marine Corps Reserve.

BY COMMAND OF GENERAL R. McC. PATE

/s/ Robt. E. Hogaboom
ROBT. E. HOGABOOM
Lieutenant General, U. S. Marine Corps
Chief of Staff

DISTRIBUTION: "A"

[fol. 32]

(SEAL)

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
Washington 25, D. C.

MCO 1300.8B CH 1
A01-wfs
17 Oct 1958

MARINE CORPS ORDER 1300.8B Ch 1

Subj: Overseas tours of duty and overseas movement of dependents

1. *PURPOSE*. The purpose of this change is to delete that portion of the basic order which states that time spent while in confinement or hospitalized as a result of misconduct or while on TAD in the United States for humanitarian reasons is not creditable toward fulfilling an overseas tour of duty. Henceforth, all time spent while permanently assigned to an overseas unit is creditable toward completing an overseas assignment.

2. *ACTION*. The following pen changes are directed:

a. Delete paragraph 8.a.
b. Redesignate paragraph 8.b. as 8.a.

BY COMMAND OF GENERAL R. McC. PATE

/s/ Robt. E. Hogaboom
ROBT. E. HOGABOOM
Lieutenant General, U. S. Marine Corps
Chief of Staff

DISTRIBUTION: "A"

25 March 1963

CERTIFIED A TRUE COPY

/s/ R. L. Barrie
R. L. BARRIE
Major, USMC

[fol. 35]

BEFORE THE TAX COURT OF THE UNITED STATES

DOCKET NO. 2131-62

HOWE A. STIDGER and BETTY M. STIDGER, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

OFFICIAL REPORT OF PROCEEDINGS—June 3, 1963

U. S. Customs Courtroom,
421 Appraisers Building,
630 Sansome Street,
San Francisco, California.
Monday, June 3, 1963.

The above-entitled matter came on for hearing, pursuant to notice at 2:25 o'clock p.m.

BEFORE:

THE HONORABLE C. R. ARUNDELL, JUDGE.

APPEARANCES:

HOWE A. STIDGER, Petitioner herein, appearing on his own behalf.

ARTHUR P. GENERAUX, JR., ESQ., on behalf of Respondent.

[fol. 37] PROCEEDINGS

THE COURT: All right, call the next case.

THE CLERK: Docket 2131-62, Howe A. Stidger and Betty M. Stidger.

MR. GENEREAUX: Arthur P. Genereaux, Jr., for the Respondent, Your Honor.

MR. STIDGER: Howe A. Stidger for the Petitioner.

THE COURT: You are appearing in person for yourself?

MR. STIDGER: Yes, sir.

THE COURT: I have read the pleading but I will give both sides an opportunity to tell me in a word what you think the point is.

OPENING STATEMENT ON BEHALF OF PETITIONER

MR. STIDGER: Your Honor, the point seems to resolve down to whether or not my expenses away from home are a deductible item or not and whether or not I was temporarily away from home or not.

THE COURT: Were you in the military service when you were away?

MR. STIDGER: Yes, I was.

THE COURT: Enlisted?

MR. STIDGER: No, sir, I was a Commissioned Officer at the time.

THE COURT: Commissioned?

MR. STIDGER: At that time, yes.

[fol. 38] THE COURT: I guess your position is that you had a permanent home where, here in California?

MR. STIDGER: That is correct, sir.

THE COURT: And when you were over in Japan you were away from it?

MR. STIDGER: Yes, sir.

THE COURT: All right, that is your position. I just wanted to see if Government counsel had the same idea.

OPENING STATEMENT ON BEHALF OF RESPONDENT

MR. GENEREAUX: If it please the Court, this case involves the Petitioner's 1948 income tax return. The Petitioners filed the return originally in Greensboro, North Carolina. They have since moved to Sacramento and requested or in Petitioner's tax return they have claimed travel expenses in the amount of $800.

Of the amount claimed $600 is attributable to the cost of meals. $150 is attributable to the cost of laundry and lodging.

THE COURT: Now, from what points, California to the Orient?

MR. GENEREAUX: This involves the entire year 1958. Petitioner husband was assigned to the Far East

throughout this period of time so it covers from January 1st 1958 to sometime in December 1958.

THE COURT: But what I don't get is the amount [fol. 39] you give for transportation—is it?

MR. GENEREAUX: No, Your Honor. Although the return originally claimed $800, $150 of this has now been conceded by the Petitioners, the $150 that was expended for laundry and lodging.

Therefore, the only amount now involved before the Court is $650 expended for meals while stationed at Iwakuni, Japan in the Far East, which was Mr. Stidger's duty station.

The entire period of assignment was from October 1st, 1957 to December 1958.

THE COURT: Was that for his personal meals or did his family go with him?

MR. GENEREAUX: As I understand it, the Petitioner husband was not permitted to bring his family to the Far East and they remained in California. This is in substance the Petitioner's argument that since they were not permitted to bring their family, since the wife and children must remain in the United States that this, therefore, is their tax home and not their duty station at Iwakuni, Japan.

As Mr. Stidger has stated, he was a Captain in the Marine Corps. He is now retired. Prior to departure to the Far East he was stationed at Cherry Point, North Carolina.

During the greater part of 1957 El Dorado, California, and then on October 1st, 1957, his entire component was [fol. 40] assigned to duty in the Far East with the First Marine Aircraft Wing, a part of the Aircraft Fleet Marine Force, Pacific, whose administrative headquarters were maintained at Marine Corps Air Station, El Toro, California.

In Paragraph 6 of the Stipulation of Facts, which I will file, there is a detailed accounting of Petitioner Husband's itinerary while stationed in the Far East.

During this entire period he spent approximately 334 days at Iwakuni, Japan, and on five different occasions left Iwakuni, always returning to Iwakuni. These five different periods total approximately 96 days.

Now, while stationed at Iwakuni, Japan he was receiving his basic subsistence and quarters allowance. In addition to that he was receiving lodging. However, he was not placed in travel status while at Iwakuni, Japan, and therefore he was not reimbursed for his meals.

The costs of these meals are $650 and this is the issue before the Court.

Now, on five different occasions Mr. Stidger was away from Iwakuni, Japan. These five different occasions totaled approximately 90 days. During those periods he was placed in travel status by the Marine Corps and he was reimbursed for his cost of meals.

Now, he has not claimed his expenses for these five periods of time, only his expenses while he was stationed [fol. 41] at Iwakuni, Japan.

Thank you, Your Honor.

THE COURT: Is there any authority for the position you take? I am bothered by the fact that you say under the regulations he was not permitted to take his family with him so that he is sort of under the necessity, you might say, in a way, of maintaining two homes.

MR. GENEREAUX: Pursuant to Marine Corps orders he was not permitted to take his family, yes, Your Honor.

Revenue ruling 55-571, if I might read it, provides, "Members of the Armed Forces of the United States on permanent duty assignment at official stations overseas are not travelling away from home and may not deduct their expenses for meals and lodging at such locations even though they are required to maintain homes in the United States for their families who are not allowed to accompany them."

THE COURT: Would you like to take the stand and be sworn and tell the whole story?

MR. STIDGER: Yes, Your Honor.

Whereupon

HOWE A. STIDGER

was called as a witness on behalf of the Petitioner and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

THE CLERK: State your name and address for the record.

[fol. 42] THE WITNESS: My name is Howe A. Stidger, 2137 Yorkshire Road, Sacramento 15, California.

During 1957 I was attached to an air squadron which was stationed in El Toro in Southern California and the squadron to which I was attached received orders to move to the Far East to serve with the First Marine Aircraft Wing, which was a part of the Aircraft Fleet Marine Force, Pacific, whose administrative headquarters were maintained at and located at El Toro, California.

While in the Far East we operated at several bases making it a total of 11 months while we were there.

The first base at which we were located was Iwakuni, and we were there approximately four months before we made a move.

From then on we were fairly frequently on the move throughout the Far East down to Okinawa, the Philippines, and throughout the Far East, a total of 11 moves.

This time in Iwakuni was reimbursed for approximately 48 days for my travel and my food expenses. The other days I was not reimbursed and not being reimbused I accrued these additional expenses I would not normally have.

In December 1958 the squadron itself returned to the United States and I came back and rejoined the squadron which then was located in Cherry Point, North Carolina, and had the same type of duties as I had had previously [fol. 43] on both the West Coast and the Far East.

This roughly covers the period of time in which I was from the United States to the Far East and returned with the same squadron.

Now, during this period I was gone I received the same pay and the same allowances as how I was right in California with the exception of 48 days, which I am not requesting that I be allowed a deduction for.

My pay in '58 was a little less than it was in '59 but this was primarily a result of my becoming eligible for a slight pay raise due to my length of time in service.

In other words, I, for practical purposes, received the same amount of mony during all periods of time.

BY THE COURT:

Q Were you a regular commissioned officer in the Marines?

A At that time, yes, sir.

Q Had you been in the service a long time?

A Yes.

Q When.

A I joined the service in 1942.

Q And continued afterwards?

A Yes, sir. Now, normally the service life does not include being separated from your family as a normal situation.

[fol. 44] Q Why was it so here?

A It comes as a result of the Marine Corps in particular being subject to a move unexpected and rapidly and during 1945 the occasion arose where there were quite a number of Marine families in China and they just about lost them and from this the U.S. Government derived the policy that they will closely evaluate all areas where Marines were sent as to whether or not their families should be allowed to accompany them and there are Marines in the Far East that do have families but they are designated as Security Forces; they are assigned to Air Stations permanently and their tours of duty run from 24 to 36 months, depending on the locality with their family.

Fleet Marine Units are assigned to a geographical area and they are expected to be ready to be moved at any moment and they do frequently move and the Petitioner is taking the position that his home is that place—well his domicile actually—the only place in which I can have a family or any kind of normal relation with my family; it was impossible to have them in the Far East and not only that; it was specifically forbidden to have my family in the Far East. Therefore, if I can't have a family or can't establish a home there, I must be away from home and the same order that forbids me to have a home there also states the length of time I shall be away from home [fol. 45] which is 15 months away which is a temporary period and this I definitely know is when it is going to sea.

THE COURT: Does the record show all the stations you were in while away?

THE WITNESS: Yes, they do. The stipulation will show it and I have documentary evidence to support my time that I am supposed to be there and the denial of home.

BY THE COURT:

Q As far as you know are the Marines the only people who have this restriction?

A Yes, Your Honor. During the time I moved throughout the Far East I was never on a base where there were no U. S. dependents, families, and in the little county in which I spent over half my time in the Far East there was adequate housing or other housing which could have been utilized for myself, if I could have been allowed to bring the family there.

Q This situation where they treat you on this assignment in a way as it would be in active war time?

A That is correct.

THE COURT: You may inquire.

MR. GENEREAUX: If Your Honor please, I neglected to file the stipulation of facts at the close of my opening statement.

THE COURT: It will be received.

[fol. 46] THE CLERK: Exhibits?

MR. GENEREAUX: Yes, attached is Exhibit 1-A, a copy of the 1958 tax return.

THE COURT: May I ask if you have any children?

THE WITNESS: Yes, I did at the time of my movement to the Far East; I had two children. One about 8 and the small child a little over one year.

CROSS-EXAMINATION

BY MR. GENEREAUX:

Q Mr. Stidger, I understand you are presently retired from the United States Marine Corps? Is that correct?

A That is correct.

Q When did you retire, sir?

A I retired last July.

Q And what rank were you when you retired?
A I was a Captain.
Q Just prior to October 1st, 1957, where was your official duty station, at that time?
A It was at Marine Corps Air Station, El Toro, California, which is Santa Ana, and I was attached to Squadron VMA 224, Marine Corps Aviation Squadron.
Q And how long were you assigned to that station approximately?
A Approximately three years, a little over two and a half, almost three years.
[fol. 47] Q Did you stay in that location that entire three years?
A No, I did not. I was temporarily gone from that location half a dozen times for periods of two to six weeks.
Q From two to six weeks?
A From the El Toro Station, yes.
Q Were you on station at that time?
A On station at that time when I was gone from two to six weeks, yes.
Q Prior to your on duty station at El Toro, what was your official duty station?
A Albuquerque, New Mexico.
Q And how long were you stationed there?
A Three years.
Q Were you actually physically in that area throughout the entire three years?
A No, I was in training from that area for periods of time on various types of maneuvers, but whenever I was gone from that area I was again reimbursed.
Q Again you were placed in travel status?
A Yes, in travel status.
Q Again you were placed in travel status while assigned away from Albuquerque, New Mexico?
A That is correct.
Q Now, on October 1, 1957, where were you assigned [fol. 48] to duty?
A To the Far East, the First Marine Aircraft Wing.
Q Was your entire component so assigned?
A Yes.
Q What was your first official duty station?

A I did not have an official duty station while in the Far East. I was attached to the First Marine Aircraft Wing, which is a mobile organization, which is capable of moving throughout the Far East at any particular time.

Q Where were you first physically located?

A At Iwakuni.

Q For approximately how long before you left?

A Five months.

Q Five months?

A Approximately.

Q While at Iwakuni were you receiving a basic subsistence and quarters allowance?

A While at Iwakuni I received the same basic subsistence and quarters allowance I received while in the United States.

Q Was that approximately $145 a month?

A Approximately, yes.

Q Were you receiving lodging while at Iwakuni, Japan?

A Yes.

Q Were you placed in travel status while at Iwakuni, [fol. 49] Japan by the Marine Corps?

A No.

Q Did you have to pay for your own meals?

A Yes.

THE COURT: Did you eat most anyplace or did you eat at a Government mess?

A I ate at the Government Mess most every opportunity that I had; it was not always possible with my duties to be available and the cost of meals at the Government Mess are approximately $65 a month.

Q On five different occasions you left Iwakuni, Japan, did you not?

A Yes.

Q And thereafter you each time returned to Iwakuni, Japan?

A Yes.

Q Your first left Iwakuni and went to the Philippine Islands and were there from February 1 to March 7th; were you not?

A Yes.

Q And during that period of time you were placed in travel status?

A Yes.

Q Were you reimbursed for your meals?

A I was not reimbursed during the entire period; they [fol. 50] sent me to the Philippine Islands on field maneuvers with other Marine units and we were reimbused for our actual days of travel, which is two days down and two days back, which is four days for that particular period you are talking about which were reimbursed.

Q This then accounts for the fact that you were only claiming meals for 48 days when in fact you were away from Iwakuni 90 some odd days, is this true?

A That is correct.

Q Might we generally state that on each of these occasions that you left Iwakuni, Japan, you were again placed in travel status?

A Yes.

Q And you were reimbursed for meals to the extent of 48 days for these five periods of time.

THE COURT: Might I get that clear?

You are at one station and you are sent to another; you were reimbursed during the actual travel period but when you got to the actual station you were not reimbursed?

THE WITNESS: That is correct.

THE COURT: Explain that a little clearer as to when they allowed reimbursement and when they did not.

THE WITNESS: All the services have the same pay regulations and when you go to certain well-established military installations they frequently know you are com- [fol. 51] ing ahead of time and they make preparations for you on a large scale maneuver and these are designated in your orders as field duties and termed field duties.

THE COURT: That there will be a general mess available for you and that quarters will be provided and so if these things are provided then the service's only expense is your actual travelling from one spot.

THE WITNESS: For which we are reimbursed.

BY THE COURT:

Q You are in those places furnished your meals free?

A No, sir, we have to pay for our meals and then we are subsequently reimbursed if the orders are so written.

If the orders include the term "field duty" we are not reimbursed; they are at our own expense.

Q And if they are designated some other way you are?

A That is right.

Q Now, what is the other way?

A If the orders do not include the term "field duty" we are not reimbursed except for the days actually involved in travel.

BY MR. GENEREAUX:

Q Mr. Stidger, isn't it a fact that you are only reimbursed for the meals if the orders provide you are on temporary assignment or travel status?

A That is correct.

[fol. 52] Q Can you explain then why you were not reimbursed for meals while stationed at Iwakuni, Japan?

A Yes, I can. When I was sent to Iwakuni, I was sent with an air squadron and this is no different from the transfer of any other air squadron and most air squadrons are permitted to take their families with them because they are going to be located at a permanent base. Marine units are not located at a permanent base.

Q Well, the fact that you are not permitted to bring your family with you, does this mean that they were then going to make you pay for your own meals?

A That is correct. All the Commissioned Officers in all the Armed Services all pay for their meals.

Q If they are at an official duty station?

A If they are not at an official duty station they pay for their meals but they pay—

Q But they are reimbursed for those meals if they are aboard ship or on temporary assignments of travel status: is that correct?

A Yes.

Q Did you receive individual travel orders?

A No, because the unit I was attached to went to the Far East but after I arrived to the Far East on movement through the area I had orders for.

Q Did you ever receive individual orders?

[fol. 53] A Yes.

Q Were you on a classified assignment?

A The squadron was on a classified assignment.

Q And isn't this the reason why you were not permitted to bring your family to Iwakuni, Japan?

A No, sir.

THE COURT: What is the situation of that classified assignment?

THE WITNESS: It means there is something regarding the movement of the squadron which they don't want to become general world-wide known or publicly known; it may not be any particular secret.

BY MR. GENEREAUX:

Q Did this involve the movement of the squadron or certain things located within the area?

A The squadron moved from the United States to the Far East taking its airplane.

Q Isn't it true that the reason that this was a classified assignment was because there were certain weapons in the area that the United States Government did not want diclosed.

A Yes, this is true, but I don't wish to be interrogated further on that, Your Honor.

MR. GENEREAUX: I don't mean to pursue that further.

BY MR. GENEREAUX:

[fol. 54] Q You testified that you made 11 moves throughout this period of time from October 1957 through October 1958?

A Yes.

Q Mr. Stidger, in your stipulation of facts there are set forth five different moves. Can you explain the differences in those?

A You are counting a different way than I am.

When the squadron first moved from the area of Japan to the Philippines there was no assurance that we would

come back to Japan even though our orders said on completion of this duty you will return—I believe it said—on completion of this duty you will return to your station; however, the station could be anywhere within the Far East.

Q When were you directed to return to Iwakuni each time?

A By written orders I was not directed to return to Iwakuni; I received orders as to where we would go and when it came time to return, fortunately we did return to Iwakuni.

Q How long all together were you stationed in the Far East?

A Fourteen months?

Q And where was your wife and children during this time?

A Santa Ana, California.

Q When you returned to the United States where did [fol. 55] you then reside?

A I returned to Santa Ana, California and immediately within a matter of a few weeks moved my family to the East Coast.

Q And how long did you remain there approximately?

A Three years, three and a half; my family was located then on the East Coast for three and a half years but I was not always there.

Q And thereafter where did you locate?

A My squadron was located on the East Coast at Cherry Point. I may not understand your question.

Q You testified when you returned to the United States you returned to Santa Ana, California.

A Yes.

Q You and your family then moved to the East Coast?

A That is correct.

Q I assumed you transferred to the East Coast?

A That is correct.

Q And you remained at what point on the East Coast?

A Cherry Point, North Carolina.

Q For three and a half years?

A Yes, until I retired.

Q And you retired at Cherry Point, North Carolina?
A Yes.
Q And then you returned to California, did you?
[fol. 56] A Yes.
Q Mr. Stidger, isn't it a fact that there are other branches of the service that are not permitted to bring their families with them when they travel to an overseas duty station?
A That is correct.
Q This is not just applicable to the United States Marine Corps?
A The part which forbids, to the best of my knowledge, no other branch of service has this restriction on their dependents travel.
Q For any area?
A No, not for any area; for the Far East.
MR. GENEREAUX: No more questions, Your Honor.
THE COURT: Have you anything else you would like to tell us or do you think that covers it?
THE WITNESS: I think that covers it, but if the Court please, I have some documents I would like to enter regarding my testimony.
THE COURT: You may step down. Show them to counsel first.

(Witness excused.)

COLLOQUY BETWEEN COURT, CLAIMANT AND COUNSEL

MR. STIDGER: Your Honor, I would like to enter as exhibits the DD Forms 214 which are entitled "Armed Forces of the United States Report of Transfer or Discharge."
[fol. 57] Now, both of these documents show that my official home of record from the 24th of July, 1956 until the 11th of August 1961, was Santa Ana, California.
THE COURT: Do you have any objection to those?
MR. STIDGER: This information is given in Item 23 of these papers.
MR. GENEREAUX: Well, this is a self-serving document. I have no objection that the document is in exist-

ence, but it was filled out obviously by Petitioner and/or his wife.

THE COURT: Well, if you don't have any objection we can put them in.

Of course the home for tax purposes may not be just where your domicile is. It is usually associated with where your place of work is, but of course, if you are temporarily away from there it is another question.

MR. STIDGER: With the Court's permission I would like to enter photostatic copies.

THE COURT: Without objection they are received. Can you mark them separately?

THE CLERK: Yes, sir.

THE COURT: Mark them separately.

THE CLERK: Petitioner's Exhibits 2 and 3 admitted in evidence.

(Petitioner's Exhibits 2 and 3 were marked for iden-
[fol. 58] tification and received in evidence.)

THE COURT: Anything else?

MR. STIDGER: Yes, Your Honor, I would like to submit photostatic copies of my withholding tax statement to indicate that I did not receive income in excess of my normal allowances during 1958.

These statements show that during 1958 I received $8,545 while in 1959 I received $8,980. They tend to back my statement. I did not receive an additional allowance.

MR. GENEREAUX: If the Court please, I think these are immaterial and irrelevant.

MR. STIDGER: If they are immaterial and irrelevant then I don't think it is necessary to submit them, sir.

THE COURT: Is that all?

MR. STIDGER: No, Your Honor, one other reference I would like to submit is the Marine Corps order for bidding.

THE COURT: Is that a Marine Corps order?

MR. STIDGER: Yes, Your Honor. And it is a true copy.

MR. GENEREAUX: It is dated 1958 whereas his tour of duty began in 1957.

THE COURT: Were these instructions in effect when you were required to go to the Orient?

MR. STIDGER: No, sir, not while I was required to [fol. 59] go but while I was there I became affected under this old—

THE COURT: But was it in effect during the years when you were there?

MR. STIDGER: Yes, it was.

THE COURT: It wasn't a different order.

Well, I think upon that statement I am going to take it.

MR. GENEREAUX: Might I ask Petitioner, did this document come into existence before July 1st, 1958?

MR. STIDGER: No.

MR. GENEREAUX: Were there similar orders that were identical to this before July 1st, 1958?

MR. STIDGER: Yes, there were, not identical, no. The orders previously to this one say 14 months and this one says 15 months. However, this is the order which controlled the ending part of my tour of duty in the Far East.

The only difference so far as I am concerned is the numbering on the order.

MR. GENEREAUX: This, I take it, was not directed specifically to you but to your component?

MR. STIDGER: All members of the U. S. Marine Corps are subject to orders. This order is directed specifically to me and to all members of the Marine Corps.

THE COURT: You were controlled by this order?

MR. STIDGER: Yes, I was.

[fol. 60] MR. GENERAUX: No objection, Your Honor.

THE COURT: It will be received.

THE CLERK: Petitioner's Exhibit No. 4 received.

(Petitioner's Exhibit No. 4 was marked and received into evidence.)

MR. STIDGER: Your Honor, Petitioner has no more to offer at this time.

THE COURT: Have you anthing further?

MR. GENEREAUX: Nothing further, Your Honor.

THE COURT: We will close the record and we will give the usual time for briefs under the rules.

THE CLERK: Forty-five and 30 days, Your Honor.

THE COURT: I think that is sufficient. Do you have a date certain?

THE CLERK: July the 18th and August the 19th

MR. GENEREAUX: If the Court please, may I have leave of the Court to withdraw the exhibits and make photostats of them?

THE COURT: The general rule is that you can withdraw your own exhibits and if Mr. Stidger does not object you can withdraw all the exhibits for photostating.

Do you have any objection?

MR. STIDGER: No, I have no objection.

THE COURT: There is a point in this case entirely new to me where I am troubled with the case where the [fol. 61] Marine Corps will not let an officer on certain duty bring his family and he has to maintain a home for them, to then say he isn't away from home.

Now, that general rule you have, has in mind the general case where there can be a family but they are not supposed to take their family and if that is true then I wouldn't very much question it.

Now, what about it? They say, "Well, you ought to be up in front with me; it wouldn't take you that far even though they might be stationed there for a year."

Now, if there is something more than a ruling, there are some holdings I would like to know. I think you might inquire whether this regulation was intended to cover cases where the military will not permit a family to be taken.

MR. GENEREAUX: If the Court please, the ruling includes those instances where the member of the Armed Services is not permitted to bring his family.

THE COURT: Well, I would be glad to get what help I can in the brief, and direct it if you will to the real points in the cases that are cited.

Now, we are having a lot of cases along the line, not military cases, but others.

Do you have the dates for briefs?

THE CLERK: Yes, sir, I have.

THE COURT: And you have given them.

[fol. 62] THE CLERK: Yes, sir.

THE COURT: All right, if that is all, we will go over until 10:00 o'clock tomorrow morning.

(Whereupon, the above-entitled matter was closed.)

[fol. 63]

BEFORE THE TAX COURT OF THE UNITED STATES

HOWE A. STIDGER and BETTY M. STIDGER, PETITIONERS,

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

40 T. C. No. 97

Docket No. 2131-62. Filed September 3, 1963.

Petitioner, Howe A. Stidger, was a Captain in the United States Marine Corps during the taxable year 1958. On October 1, 1957, he was assigned to duty in the Far East. His wife and two children remained in California as they were prohibited by Marine Corps orders from accompanying petitioner or establishing a home in the Far East. During 1958 petitioner deceived a housing and subsistence allowance of approximately $145 per month and, in addition, an allowance for lodging while stationed at Iwakuni, Japan. While in the Far East, except for 49 days when petitioner was on travel status, petitioner had to furnish his own meals which cost him $650. *Held*, no part of the $650 is deductible under sections 62 (2) (B) and 162 (a) (2), I.R.C. 1954, as traveling expenses while away from home in the pursuit of a trade or business. *Howe A. Stidger, pro se.*

Arthur P. Generaux, Jr., for the respondent.

FINDINGS OF FACT AND OPINION—September 3, 1963

[fol. 64] ARUNDELL, *Judge:* Respondent determined a deficiency in income tax for the calendar year 1958 in the amount of $180.10.

The only issue is whether petitioner, Howe A. Stidger, is entitled to deduct, during 1958, as traveling expenses while away from home in pursuit of a trade or business, an amount of $650 for meals while stationed in the Far East.

FINDINGS OF FACT.

The stipulated facts are so found and are incorporated herein by this reference.

Petitioners, husband and wife, are individuals now residing in Sacramento, California. At the time they filed their petition they were presiding at Cherry Point, North Carolina. The joint return for the calendar year 1958 was filed with the district director of internal revenue at Greensboro, North Carolina. Petitioner, Howe A. Stidger, will hereinafter sometimes be referred to as petitioner.

Petitioner was a Captain in the United States Marine Corps during the taxable year 1958. He is now retired but prior to his retirement in July 1962 he had continually served as an active member of the Corps since 1942. Approximately two and one-half to three years preceding October 1, 1957, petitioner was attached to an air squadron stationed in El Toro in Southern California. On October 1, 1957, petitioner, together with his component, were assigned to duty in the Far East with the First [fol. 65] Marine Aircraft Wing, a part of Aircraft Fleet Marine Force, Pacific, with administrative headquarters at Marine Corps Air Station, El Toro (Santa Ana) California.

Dependents of personnel assigned to duty with the Aircraft Fleet Marine Force, Pacific, in the Far East, were prohibited by Marine Corps orders to accompany said personnel or establish homes in the Far East.

During the entire year 1958 petitioner's wife and two children resided at Santa Ana, California.

Throughout the entire year 1958 petitioner received a housing allowance of approximately $102.50 per month and subsistence allowance of approximately $42.50 per month.

On October 1, 1957, petitioner departed from El Toro, California. Petitioner's itinerary from October 1957 to December 1958 was as follows:

Date	Place	Approximate No. of Days
1 Oct 57 to 20 Feb 58	Departed MCAS El Toro, Calif., traveled to, and duty at Iwakuni, Japan	142
21 Feb 58 to 7 Mar 58	Cubi Point, Philippine Islands	14
8 Mar 58 to 19 Apr 58	Iwakuni, Japan	42
20 Apr 58 to 23 May 58	Naha AFB, Okinawa	33
24 May 58 to 10 Aug 58	Iwakuni, Japan	78
11 Aug 58 to 29 Aug 58	Yokosuka, Japan	18
30 Aug 58 to 1 Sep 58	Iwakuni, Japan	2
2 Sep 58 to 19 Sep 58	San Diego, Calif.	17
20 Sep 58 to 25 Sep 58	Iwakuni, Japan	5
26 Sep 58 to 10 Oct 58	Naha AFB, Okinawa	14
11 Oct 58 to 14 Dec 58	Iwakuni, Japan	64
15 Dec 58 to 19 Dec 58	Travel to MCAS El Toro, Calif.	4

[fol. 66] Paragraph 9 of the stipulation is as follows:

> 9. During the year 1958, petitioner was placed in travel status for forty-nine days and, in addition to his normal housing and subsistence allowance, his expenses for meals and lodging were reimbursed. Petitioner does not claim travel expenses for the forty-nine days that he received reimbursement for the costs of meals and lodging.

Commissioned officers pay for their own meals at an official duty station; however, if they are on temporary assignment or in travel status, they are reimbursed for their meal expenses.

During the periods that petitioner was located at Iwakuni he received free lodging in addition to his housing and subsistence allowance but was not in travel status and he therefore did not receive free meals.

While in the Far East in 1958, except for the 49 days he was placed in travel status, petitioner had to pay for his own meals which cost him $650.

On the joint return for 1958 petitioner deducted the $650 he spent for meals. Respondent disallowed the deduction for the reason that "it has not been established that

the amount claimed constitutes an ordinary and necessary business expense."

Petitioner completed his tour of duty in the Far East in December 1958 and was thereafter assigned to duty at Marine Corps Air Station, Cherry Point, North Carolina, where he remained until he retired in July 1962.

[fol.67] Ultimate Findings of Fact

During the taxable year 1958 petitioner's tax home was his military post of duty in the Far East. His stay there was indefinite, indeterminate, or permanent and not temporary.

OPINION

The issue is whether petitioner is entitled to deduct, under section 62 (2) (B) and 162 (a) (2), I.R.C. 1954,[1] the $650 he spent during 1958 for meals while stationed in the Far East. The corresponding provisions of the 1939 Code were sections 22 (n) (2) and 23 (a) (1) (A). In *Commissioner* v. *Flowers*, 326 U.S. 465, the United States Supreme Court declared that three conditions must be satisfied before a traveling expense deduction may be

---

[1] SEC. 62. ADJUSTED GROSS INCOME DEFINED.

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

* * * *

(2) Trade and business deductions of employees.—

* * * *

(B) Expenses for travel away from home.—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

* * * *

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; * * *

[fol. 68] allowed under section 23 (a) (1) (A) and that "Failure to satisfy any one of the three conditions destroys the traveling expense deduction." The three conditions were stated thus:

> (1) The expense must be a reasonable and necessary traveling expense, as that term is generally understood. This includes such items as transportation fares and food and lodging expenses incurred while traveling.
>
> (2) The expense must be incurred "while away from home."
>
> (3) The expense must be incurred in pursuit of business. This means that there must be a direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.

In the *Flowers* case the Supreme Court held that the taxpayer there did not satisfy the third condition. In the instant case we do not think petitioner has satisfied the second condition.

Petitioner contends that during 1958 his "home" was in Santa Ana, California, where his wife and children were residing and that, therefore, the expenses in question were incurred "while away from home." "Home" as used in the statute means the taxpayer's principal place of business, employment, or post or station at which he is employed. *Mort L. Bixler*, 5 B.T.A. 1181; *Raymond E. Kershner*, 14 T.C. 168, 174; *James R. Whitaker*, 24 T.C. 750; *O'Toole* v. *Commissioner*, 243 F. 2d 302 (C.A. 2, 1957), affirming *per curiam* a Memorandum Opinion of this Court. In the *O'Toole* case the Second Circuit said:

[fol. 69] Upon these facts the Tax Court found that petitioner's home, for the purpose of the statute, was at Long Beach where he was engaged in full time employment and that petitioner's maintaining another home at Laurelton was "immaterial." * * * This finding is clearly correct.

If, however, petitioner's place of employment may be said to be temporary as distinguished from indefinite, indeterminate or permanent, a deduction for traveling expenses while away from home may be allowed. *Harry F. Schurer*, 3 T.C. 544; *E. G. Leach* 12 T. C. 20. Cf. *Beatrice H. Albert*, 13 T.C. 129. In *Leo C. Cockrell*, 38 T.C. 470, 479, on appeal to C.A. 8, we said:

> This Court and other courts have allowed a deduction for expenditures for travel including meals and lodging when a taxpayer's employment at the place where such expenditures are made is temporary as contrasted with indefinite or indeterminate. *Peurifoy* v. *Commissioner*, 358 U.S. 59, 61 (1958), and cases there cited. What constitutes "temporary" as distinguished from "indefinite" is a question of fact.
> * * *

Although petitioner's tour of duty in the Far East was for a period of approximately 15 months, we do not think it can be said to be a temporary assignment. While 15 months may have lacked real permanence, "the mere absence of permanence does not necessarily imply that degree of temporariness which would allow deductibility of traveling expenses." *Floyd Garlock*, 34 T.C. 611, 616. Cf. *Beatrice H. Albert*, *supra*. We have found as an ultimate fact that petitioner's stay in the Far East was not temporary.

[fol. 70] We think the facts in the instant case are very much like the facts in *Bercaw* v. *Commissioner*, 165 F. 2d 521 (C.A. 4, 1948), affirming a Memorandum Opinion of this Court; and *James R. Whitaker*, *supra*. See also Rev. Rul. 55-571, 1955-2 C.B. 44.

In *Bercaw* the taxpayer was an Army Captain who was stationed in Fort Meade, Maryland. He claimed a deduction for money spent for meals at Fort Meade and for weekend trips to his home in Virginia. We disallowed the claimed deduction. In affirming our holding, the Fourth Circuit, among other things, said:

> The taxpayer was engaged in the business of an Army officer. His place of business was his particular Army post. If his Army duties required him to travel, he

> would have received a per diem travel allowance which would not have been taxable. Jones v. United States, 60 Ct. Cl. 552. But whenever he made a permanent change of station that place of duty became his place of business and there was his "home" within the meaning of Section 23 (a) (1) (A). See Commissioner v. Flowers, 326 U.S. 465, 66 S.Ct. 250, 90 L.Ed. 203; Barnhill v. Commissioner, 4 Cir., 148 F. 2d 913, 159 A.L.R. 1210. Thus the expenditures for meals and striker service while at this post were personal living expenses and non-deductible * * *. This conclusion is inescapable when it is remembered that this officer has been paid commutation of quarters and a subsistence allowance, both of which allowances are not considered as income for the purposes of taxation.

In *James R. Whitaker, supra*, the taxpayer was a civil engineer residing at Hawarden, Iowa, where he maintained a home for himself and his family. In February 1951 he commenced work as an assistant project engineer for North Atlantic Constructors, a joint venture operating under a contract with the Department of Army for the [fol. 71] performance of certain off-shore construction in the general vicinity of Thule, Greenland. The exact location of the job site was a military secret. He was in Thule from December 15, 1951, to January 5, 1952; from April 8, 1952, to August 12, 1952; and from August 29, 1952, to November 26, 1952. The taxpayer's family was not permitted to accompany him to Greenland. Whenever he left Greenland he was reimbursed for traveling expenses incurred with the exception of one trip. In his 1952 income tax return the taxpayer claimed board and lodging expenses while at Thule, Greenland. He spent a total of 222 days in Thule during the taxable year 1952. In disallowing the claimed deduction, we said:

> Here, although petitioner contends Thule was not his main post of duty or principal place of business, we think the facts call for the ultimate finding that it was. The fact that petitioner was not permitted to take his family to Thule, so that he had no choice in the matter, does not help petitioner. * * *

The facts in the instant case are distinguishable from those in *Laurence P. Dowd*, 37 T.C. 399, relied upon by petitioner, in that the evidentiary facts in *Dowd* showed that Dowd's employment in Japan during 1956 and 1957 was temporary as contrasted with indefinite, indeterminate, or permanent.

We hold petitioner is not entitled to deduct the $650 spent for meals during the taxable year 1958.

Decision will be entered for the respondent.

[fol. 72]

BEFORE THE TAX COURT OF THE UNITED STATES

WASHINGTON

Docket No. 2131-62.

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

DECISION—September 3, 1963

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion filed September 3, 1963, it is

ORDERED AND DECIDED: There is a deficiency in income tax for the calendar year 1958 in the amount of $180.10.

* * * * *

[fol. 73]

BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 2131-62

[File Endorsement Omitted]

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

NOTICE OF APPEAL—Filed December 4, 1963

The above named petitioners hereby appeal from the adverse decision of the United States Tax Court in its decision entered September 3, 1963, to the United States Court of Appeals for the Ninth Circuit.

If the Circuit Court of Appeals allows appellant review as requested by your petitioner, such additional supplementary pleadings and other documentary materials as are allowed by law, shall be forthcoming.

The Clerk of the Court is requested to prepare the record for review and notify petitioner of the costs and charges.

Dated, December 2, 1963.

/s/ Howe A. Stidger
Petitioner

/s/ Betty M. Stidger
Petitioner

[fol. 75]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

(SEAL)

Docket No. 2131-62

Tax Court of the United States, Filed Dec. 4, 1963.

HOWE A. STIDGER AND BETTY M. STIDGER,
PETITIONER ON REVIEW

vs.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT ON REVIEW

NOTICE OF FILING PETITION FOR REVIEW

TO: R. P. Hertzog
Acting Chief Counsel,
Internal Revenue Service.

You are hereby notified that the above-named petitioners(s) on December 4, 1963, filed with the Clerk of the Tax Court of the United States, at Washington, D.C., a petition for review by the United States Court of Appeals for the Ninth Circuit, of the decision of the Tax Court entered in the above-entitled case(s).

Copy of the indicated document(s) as filed is hereto attached and served upon you.

/s/ Howard P. Locke
Clerk of the Court
Tax Court of the United States.

Dated: December 4, 1963

Service of copy of Petition for Review acknowledged.

Dated: December 4, 1963

/s/ R. P. Hertzog CPD
Acting Chief Counsel.
Internal Revenue Service,
Attorney for Respondent.

[fol. 78]

BEFORE THE TAX COURT OF THE UNITED STATES

WASHINGTON

Docket No. 2131-62

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ORDER ENLARGING TIME—December 30, 1963

For cause, it is

ORDERED: That the time for filing the record on review in the United States Court of Appeals for the Ninth Circuit is extended to March 3, 1964.

/s/ Norman O. Tietjens
Judge.

Dated: Washington, D.C.
December 30, 1963

SERVED DEC. 30, 1963

[fol. 79]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

* * * *

[fol. 80]

* * * *

Before: MERRILL, BROWNING & ELY, Circuit Judges

MINUTE ENTRY OF ORDER OF SUBMISSION—November 12, 1965

This cause coming on for hearing, Howe A. Stidger, in propria persona, argued for the petitioners, and Michel Cavanaugh, Attorney, Internal Revenue Service, argued for the respondent, thereupon the Court ORDERED the cause submitted for consideration and decision.

[fol. 81]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

* * * *

Before: MERRILL, BROWNING and ELY, Circuit Judges

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION AND FILING AND RECORDING OF JUDGMENT—December 27, 1965

ORDERED that the typewritten opinions this day rendered by this Court in above cause be forthwith filed by the Clerk and that a judgment to be filed and recorded in the minutes of this Court in accordance with the majority opinions rendered.

[fol. 82]

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 19,630

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

OPINION—December 27, 1965

On Petition to Review a Decision of The Tax Court of the United States

Before: MERRILL, BROWNING and ELY, Circuit Judges

PER CURIAM: [1]

This is another of those troublesome cases involving the question whether certain travel expenses incurred by a taxpayer were incurred while "away from home" and are deductible for federal income tax purposes under section 162 of the Internal Revenue Code of 1954. At the time the deduction involved here was claimed, section 162 read in pertinent parts: [2]

"(a) In General—There shall be allowed as a deduction all the ordinary and necessary expenses paid [fol. 83] or incurred during the taxable year in carrying on any trade or business including * * *

---

[1] This opinion was written by Judge William E. Orr. Following Judge Orr's death on October 7, 1965, Judge Browning was assigned to the panel and the case was reargued. The majority of the court as now constituted adopts Judge Orr's opinion as its own.

[2] Section 162(a)(2) was amended in 1962 by striking out "(including the entire amount expended for meals and lodging)" and inserting in lieu thereof "(including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances)." Revenue Act of 1962, § 4(b), CCH Stand.Fed.Tax Rep. 85, 100 (extra ed. No. 44). This amendment is not involved in the case before us.

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business * * *"

The facts, found by the Tax Court as stipulated, are substantially as follows. During the taxable year 1958 taxpayer was a captain in the United States Marine Corps. For approximately two and one half years prior to October 1, 1957, he had been attached to an air squadron stationed in El Toro in Southern California. On October 1, 1957, taxpayer, together with his component, was assigned to duty in the Far East with the First Marine Aircraft Wing, a part of the Aircraft Fleet Marine Force, Pacific, with administrative headquarters at Marine Corps Air Station, El Toro (Santa Ana) California. It was impossible for taxpayer to be accompanied abroad by his family because Marine Corps orders prohibited dependents of personnel assigned to duty with the Aircraft Fleet Marine Force, Pacific, from accompanying such personnel or establishing homes in the Far East. During taxpayer's entire tour abroad his wife and two children remained at the family's established home in Santa Ana, California.

Commissioned officers pay for their own meals at an official duty station unless they are considered to be on a temporary assignment or in travel status, in which cases they are reimbursed for their meal expenses. Taxpayer's principal duty station while in the Far East was Iwakuni, Japan. While at Iwakuni he received free lodging; but as he was not considered to be on travel status while there, he did not receive free meals. During 1958, except for forty-nine days during which he was placed on travel status while absent from Iwakuni and reimbursed for travel expenses, taxpayer had to pay for his own meals at a cost to him of $650.

On his joint return for 1958 taxpayer deducted the $650 as a travel expense incurred while away from home. The Commissioner disallowed the deduction and claimed a deficiency. Taxpayer petitioned the Tax Court for a redetermination of the alleged deficiency, and the Tax Court found as ultimate facts that during the taxable

[fol. 84] year taxpayer's "tax home" was his military post of duty in the Far East, and that his stay there was "indefinite, indeterminate, or permanent and not temporary." Accordingly, the Tax Court found that the expenses in question were not incurred while traveling "away from home" within the meaning of section 162(a)(2) and therefore were not deductible. On appeal from the decision of the Tax Court, we are faced squarely with the question of the meaning of "home" within section 162(a)(2).

Examination of the legislative history surrounding the introduction of the phrase "away from home" into the Revenue Act of 1921 is inconclusive as to Congressional intent regarding the meaning of "home." As early as 1927, however, the Board of Tax Appeals held that the precursor of section 162(a)(2) was intended to permit a deduction for traveling expenses only if the expenses were incurred while the taxpayer was away from his "post of duty" or place of employment. *Mort L. Bixler*, 5 B.T.A. 1181 (1927). The word "home" thus became a term of art with a meaning different from its normal usage as residence, domicile or dwelling place; and the "tax home" doctrine was established.

Since the Tax Court's decision in the *Bixler* case the Commissioner has consistently maintained that "home" in the statute means "tax home" and that one's tax home is one's "home post" or place of employment. This construction has been accepted by a number of courts. See *Barnhill* v. *Commissioner*, 148 F.2d 913 (4th Cir. 1945); *O'Toole* v. *Commissioner*, 243 F.2d 302 (2nd Cir. 1957).

In *Wallace* v. *Commissioner*, 144 F.2d 407 (9th Cir. 1944), however, this court rejected the "tax home" doctrine and held that the traveling expenses of a taxpayer who regularly lived in San Francisco but visited Los Angeles on business met the statutory requirement that traveling expenses be incurred while away from home. In *Wallace* we unequivocally stated that "home" as used in the statute should be given its ordinary and usual meaning. *Wallace* v. *Commissioner*, *supra*, at 410.

A chance to resolve a conflict among the circuit courts as to the meaning of "home" to which our opinion in *Wallace* contributed came before the Supreme Court in

[fol. 85] *Flowers* v. *Commissioner*, 326 U.S. 465 (1946); in considering the travel expense deduction the court set out three requirements, each of which had to be met before the deduction would be allowed.

> "(1) The expense must be a reasonable and necessary traveling expense, as that term is generally understood. This includes such items as transportation fares and food and lodging expenses incurred while traveling.
>
> (2) The expense must be incurred 'while away from home,'
>
> (3) The expense must be incurred in pursuit of business * * *."

The court noted the division of opinion regarding the meaning of "home" in the circuit courts but found it unnecessary to reconcile because in its view of the case the expenses involved did not meet the third requirement of being incurred in pursuit of business. *Flowers* thus avoided rather than settled the "home" controversy.

Strictly applied, the "tax home" doctrine would greatly restrict the travel expense deduction; and the Tax Court soon recognized an exception to it in cases where the taxpayer's employment away from home could be considered "temporary." *Chester D. Griesemer*, 10 B.T.A. 386 (1928); *Walter F. Brown*, 13 B.T.A. 832 (1928); accord *Coburn* v. *Commissioner*, 138 F.2d 763 (2nd Cir. 1943). However, where the employment away from home was of indefinite or indeterminate duration, the deduction was denied. *Willard S. Jones*, 13 T.C. 880 (1949). The Commissioner accepted the "temporary-indefinite" distinction and recognized "temporary" employment as an exception to the rule that "home" equals place of employment. I.R.S. Pub. No. 300, 5 CCH 1956 Stand.Fed.Tax Rep. para. 6347; Rev.Rul. 189, 1960-1 Cum.Bull. 60, 65.

The Supreme Court had a second opportunity to clarify the "home" controversy when the question of the scope of the "temporary" employment exception came before it in *Peurifoy* v. *Commissioner*, 358 U.S. 59 (1958). In *Peurifoy* three construction workers claimed deduction for living expenses incurred while living for periods of from

eight to twenty months at construction sites some distance from their permanent residences. The Tax Court allowed the deductions on the ground that the employment away [fol. 86] from home was "temporary." The Fourth Circuit assumed without deciding that the temporary employment exception was valid and that it applied to the "exigencies of the business" requirement as well as the "away from home" requirement set out in *Flowers* v. *Commissioner, supra.* The court then reversed because the taxpayers had not met their burden of proof of showing their employment was temporary and not indefinite.

Upon review on writ of certiorari the Supreme Court made the same assumptions and stated:

> "Generally, a taxpayer is entitled to deduct unreimbursed travel expenses * * * only when they are required by the exigencies of business * * *.
>
> To this rule, however, the Tax Court has engrafted an exception which allows a deduction for expenditures of the type made in this case where the taxpayer's employment is 'temporary' as contrasted with 'indefinite' or 'indeterminate.' * * * The respondent does not in the present case challenge the validity of this exception to the general rule."

The Commissioner contends that in *Peurifoy* the Supreme Court approved the temporary employment concept as an exception to its rule in *Flowers* v. *Commissioner, supra,* and that, therefore, a post of indefinite or indeterminate employment necessarily becomes the taxpayer's "tax home." It is clear from the language quoted above, however, that the validity of the temporary employment exception was assumed without decision by the Supreme Court in *Peurifoy* because the court did not consider that a challenge to the exception was before it. The court affirmed on the ground that it would not disturb the circuit court's factual assessment that the employment involved was not temporary. And for the second time the Supreme Court specifically avoided a definition of the word "home."

This was our position in *Harvey* v. *Commissioner,* 283 F.2d 491 (9th Cir. 1960), when we stated:

> "Peurifoy, then, does not establish the rule, as suggested by the Commissioner, that the place where a taxpayer is employed for an 'indefinite' period, is *necessarily* his tax home."

[fol. 87] In *Harvey* the taxpayer maintained his home in Santa Monica, California, where he worked for the Douglas Aircraft Company. From Santa Monica he was transferred on temporary assignment to Edwards Air Force Base, 117 miles away. Taxpayer's tour of duty at Edwards was to be for an indeterminate length of time; he knew only that he would work there as long as he was needed, a period which in the circumstances of his job could be expected to last from a few months to two years. In fact, he remained thirteen months.

The Tax Court found Edwards to be the taxpayer's home during the taxable year in question on the ground that his term of employment there was "indefinite." We concluded that when the term "indefinite" was used as the Tax Court used it, the test applied became a mechanical one, incapable of effectuating the purpose of the deduction provision; and we formulated a more flexible test:

> "An employee might be said to change his tax home if there is a reasonable probability *known to him* that he may be employed for a long period of time at his new station. What constitutes 'a long period of time' varies with circumstances surrounding each case. If such be the case, it is reasonable to expect him to move his permanent abode to his new station, and thus avoid the double burden that the Congress intended to mitigate. On the other hand, if it is very likely that taxpayer's stay away from home will be short, then it seems quite unreasonable to expect him to move his domicile, even though it cannot be said that his employment will terminate 'within a fixed or reasonably short period,' to use the words of the Tax Court."

In drawing the distinction between long and short periods of employment we did not reject the distinctions which had been drawn by other courts, but we did reject the inflexible manner in which the distinction had been em-

ployed by the Commissioner and the Tax Court. We used the length of employment away from one's established home as a factor in determining what we considered to be the fundamental question in these travel expense cases—is it reasonable to expect the taxpayer to move his residence to his place of employment. Applying this test to [fol. 88] the facts of the *Harvey* case, we held that the taxpayer could not reasonably have been expected to move his residence, and the deduction was allowed.[3]

In *Wright* v. *Hartsell*, 305 F. 2d 221 (9th Cir. 1962), we again looked to whether it would be reasonable to expect the particular taxpayer to move his home nearer to the place where he was working in determining the deductibility of claimed travel expenses. In *Wright* the taxpayer commuted daily from his residence in Pocatello, Idaho, to work at Atomic Energy Commission research sites seventy miles away in an inhospitable desert area remote from any town or place of habitation. We held that a taxpayer's inability to maintain a home in the usual sense at his place of employment was a valid reason for allowing the deduction as travel expenses of the resulting costs of transportation, food and lodging. We concluded, however, that the taxpayer had a duty to mitigate his expenses by moving as near to the job site as is reasonable. The deduction in *Wright* was accordingly measured with reference to the nearest habitable community to the employment site, the town of Arco, Idaho. As Arco was neither the taxpayer's actual residence nor his place of employment, our decision in *Wright* necessarily proceeded upon the basis that "home" as used in the statute means residence, with the qualification that the taxpayer should establish his residence as near to his place of employment as is reasonable.

The Commissioner has argued that rejection of the "tax home" doctrine will result in the deductibility of nondeductible commuting and other personal expenses. We

---

[3] In *Harvey* v. *Commissioner* both the taxpayer and the Commissioner had stipulated that "home" meant "home post" or place of employment and not place of abode. The meaning of "home" as such was, therefore, not before us; and we inquired only into the application of the distinction between temporary and indefinite employment.

think, however, that the words of section 162 limiting deductions to "ordinary and necessary" expenses stand to prevent such a result. It has been clear since the Supreme Court's decision in *Flowers* v. *Commissioner* that "the exigencies of business rather than the personal conveniences and necessities of [this taxpayer] must be the motivating factors." *Flowers* v. *Commissioner, supra.*

[fol. 89] By placing the emphasis on the "ordinary and necessary" requirement of the statute, there is no necessity for attributing any special "tax sense" to the word "home." Both the Commissioner's distinction between temporary and indefinite employment and the "exigencies of business" test as set out in *Flowers* v. *Commissioner* look to the duration of employment as a principal factor in separating deductible business expenses from nondeductible personal expenses. The "exigencies of business" test follows directly and naturally from the "ordinary and necessary" requirement of the statute itself. The temporary-indefinite distinction on the other hand, introduces into the statute an extraneous concept formulated in the first place only to provide an exception to the Commissioner's strained rule that "home" equals place of employment. Neither the rule nor its exception are necessary and both obscure the fundamental question of whether expenses claimed as travel expenses under section 162 are ordinary and necessary business expenses. Deductibility under the statute need not turn on fictions and inflexible rules of thumb. By looking to the ordinary and necessary requirement of the statute the end result will in most cases be substantially the same, and the unfairness inherent in a strict application of the "tax home" doctrine will be avoided.

"Home" in the statute, then, means home in its ordinary and usual sense, as we stated long ago in *Wallace* v. *Commissioner*. The length of time a taxpayer is employed away from that home does not itself give the answer, but is a factor in determining the answer to the question whether the taxpayer could reasonably be expected to have moved his home. If it appears reasonable to have expected the taxpayer to move closer to his place of employment, then expenses claimed as travel expenses cannot be said to be "ordinary and necessary." On the other

hand, if such a move appears unreasonable, the ordinary and necessary requirement is met, and the deduction will be allowed.

We turn now to the particular facts of the case before us. Taxpayer's duty station in the Far East was dictated by military orders. Marine Corps orders also prohibited him from establishing a home for his dependents in the Far East. There is no question here as to whether it was reasonable for taxpayer to have moved his home. He had no choice but to maintain a separate residence for his [fol. 90] family.[4] Accordingly, we hold that taxpayer's travel expenses while away from home during the taxable year in question were "ordinary and necessary" expenses and are deductible under section 162.

The Commissioner appears to be making the final argument in this case that taxpayer is not entitled to a deduction for the meal expenses because he has failed to show that he would not have been obliged to pay an equal amount for meals at his home post in the United States. The statute, however, specifically provides that "traveling expenses, (including the *entire* amount expended for meals and lodging)" is deductible. (Emphasis added.) We have determined the expenses claimed to have been ordinary and necessary. Taxpayer need make no further showing.

The judgment is reversed.

ELY, Circuit Judge, Dissenting:

I dissent. With our late Brother Orr, one of the noblest of men, I discussed my opposing views, and he, without doubt, would have expected and encouraged me to record them.

When the Marine Corps transferred the taxpayer to his post of duty in Japan, the assignment was for a period of fifteen months. The period was subject to extension by orders of the Marine Corps. As the majority points out,

---

[4] Taxpayer's position is similar to that of the public official who must maintain his home elsewhere than his official place of employment. In such cases the travel expense deduction has been granted. *United States* v. *Le Blanc*, 278 F.2d 571 (5th Cir. 1960); *Moss* v. *United States*, 145 F.Supp. 10 (W.D.S.C. 1956); *Emmert* v. *United States*, 146 F.Supp. 322 (S.D.Ind. 1955).

there were forty-nine days during taxpayer's fourteen and one-half months of service in Japan when he was away from his station on temporary duty, placed in "travel status", and reimbursed for his expenses. For the remainder of the period of overseas duty, approximately thirteen months, the taxpayer received from the Government, in addition to his lodging, a tax-exempt payment of approximately $145 per month as a quarters and subsistence allowance. Notwithstanding the fact that the allowance for subsistence was $42.50 per month, the majority upholds the taxpayer's claim that the *entire* cost of his [fol. 91] meals during the approximate thirteen-month period is a tax-deductible expense allowance. In so doing, the majority cast our circuit into direct conflict with Revenue Ruling 55-571, 1955-2 Cum. Bull. 44,[1] and with the decision of the Fourth Circuit in *Bercaw* v. *Commissioner*, 165 F. 2d 521 (1948), wherein the Court wrote,

> "The taxpayer was engaged in the business of an Army officer. His place of business was his particular Army post. If his Army duties required him to travel, he would have received a per diem travel allowance . . . . Thus the expenditures for meals and striker service while at this post were personal living expenses and non-deductible . . . . This conclusion is inescapable when it is remembered that this officer has been paid commutation of quarters and a subsistence allowance, both of which allowances are not considered as income for the purposes of taxation."

165 F.2d at 524. (Citations omitted.) See also *James R. Whitaker*, 24 T.C. 750 (1955).

Regardless of whether or not the taxpayer was "away from home" within the meaning of that language as it is used in section 162(a)(2), the only expenses which are deductible under the section are "traveling expenses". *Commissioner* v. *Flowers*, 326 U.S. 465, 90 L. Ed. 203, 66 Sup. Ct. 250 (1946). "The expense must be a reasona-

[1] "members of the Armed Forces of the United States on permanent duty assignments at official stations overseas are not traveling 'away from home' and may not deduct their expenses for meals and lodging at such locations, even though they are required to maintain homes in the United States for their families who are not allowed to accompany them."

ble and necessary *traveling* expense, as that term is generally understood." 326 U.S. 470. (Emphasis added.) It should follow that the question is not whether the taxpayer was "away from home", but whether during the period for which the expense is claimed he was actually "traveling". The Tax Court has determined that he was not, and our duty is to sustain the finding absent demonstration by the taxpayer that the finding was clearly erroneous. *Commissioner* v. *Duberstein*, 363 U.S. 278, 291, 4 L. Ed. 2d 1218, 80 Sup. Ct. 1190 (1960); *Truck Ter-*
[fol. 92] *minals, Inc.* v. *Commissioner*, 314 F.2d 449, 455 (9th Cir. 1963); *Young* v. *Commissioner*, 268 F.2d 245 (9th Cir. 1959).

A factual determination of the Tax Court, supported by substantial evidence, should not, on review, be set aside as "clearly erroneous", unless "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Commissioner* v. *Dubersten, supra* at 291, quoting *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395, 92 L. Ed. 746, 68 Sup. Ct. 525 (1948), and, in my opinion, the whole body of evidence clearly supports the Tax Court's finding. In the first place, the period of time for which the taxpayer was assigned to his Japanese post made of that post his "permanent" station in a military sense. In making provisions for "travel and transportation allowances . . . upon a *change* of *permanent* station" (37 U.S.C. § 404(a). (Emphasis added.)), the Congress has recognized that a soldier's "permanent station", being subject to "change", is never permanent in an enduring sense. In the present case, however, the period of assignment, fifteen months with possibility of extension, was factually determined to be an "indefinite" period rather than a "temporary" period, and this should be an important, if not a controlling, consideration. *Puerifoy* v. *Commissioner*, 358 U.S. 59, 3 L. Ed. 2d 30, 79 Sup. Ct. 104 (1958). In the second place, the Marine Corps itself determined that the taxpayer, during his fourteen and one-half months in Japan, was not in "travel status" except for the forty-nine days when he was temporarily detached to locations comparatively short distances from his "permanent" Japanese post. If it be conceded that the

Marine Corps' determination should not be conclusive, it nevertheless constitutes strong support for the Tax Court's factual decision. *William W. Todd*, 10 T.C. 655 (1948). See also *Allan Cunningham*, 22 T.C. 906 (1954).

The Congress has undertaken to assure that military men who serve our country overseas shall not suffer undue financial loss. It is provided that the Secretaries of the uniformed services may authorize payment to overseas military personnel of per diem allowances related to the cost of living, "including a cost of . . . subsistence", and such allowance is authorized to be made to the soldier "whether or not he is in a travel status". 37 U.S.C. § 405, revising in 1962 without substantial change The [fol. 93] Career Compensation Act of 1949, ch. 681, § 303 (b), 63 Stat. 813. From these provisions I see an intent on the part of Congress that the soldier assigned to overseas duty shall not sustain significant financial loss and that any such loss shall be prevented by the direct payment of travel expenses and increased allowances rather than by tax deduction which might properly be claimed by others for whom no specific increased benefits are provided.[2]

I would affirm the Tax Court.

---

[2] I do not believe that in the selection of qualified military personnel for overseas duty, the Department of Defense should be invited to concern itself with increased cost to the Government depending upon whether one soldier is "away from home" and another soldier, with a different family status, is not.

In the so-called "Cuban crisis" of recent years, we read that the dependents of our military personnel stationed at Guantanamo Bay were removed to the United States. Would the majority say that those servicemen, immediately upon the transfer of their dependents, became "away from home" and commenced to "travel"?

It is anomalous and discriminatory that our servicemen now engaged in Vietnam are entitled, under the majority opinion, to a more favorable tax treatment in our circuit than are those who, while doubtless fighting with equal valor, are denied deductions for their "traveling" expenses in the Fourth Circuit and, apparently, in the Sixth Circuit also. See *Commissioner* v. *Motch*, 180 F.2d 859 (6th Cir. 1950), wherein the court wrote, at 861,

> "'[An armed services officer] is limited in his personal expenditures chargeable to the government, or taxwise deductible, to the usual stipends fixed under approprite regulations adopted in pursuance of Acts of Congress for his subsistence and travel expenses."

[fol. 94]

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 19,630

HOWE A. STIDGER AND BETTY M. STIDGER, PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

JUDGMENT—December 27, 1965

Upon Petition to Review a Decision of The Tax Court of the United States,.....

This Cause came on to be heard on the Transcript of the Record from The Tax Court of the United States,

.....

and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the.....Decision of the said Tax Court of the United States in this Cause be, and hereby is reversed.

Filed and entered December 27, 1965

[fol. 95]

[Clerk's Certificate Omitted in Printing]

[fol. 96]

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1965

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

HOWE A. STIDGER, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—March 29, 1966

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 26, 1966.

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 29th day of March 1966

[fol. 97]

SUPREME COURT OF THE UNITED STATES

No. —, October Term, 1965

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs

HOWE A. STIDGER AND BETTY M. STIDGER

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—April 25, 1966

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, further extended to and including May 26, 1966

/s/ W. O. Douglas
Associate Justice of the Supreme Court of the United States

Dated this 25th day of April, 1966

[fol. 98]

SUPREME COURT OF THE UNITED STATES

No. 173, October Term, 1966

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

HOWE A. STIDGER, ET UX

ORDER ALLOWING CERTIORARI—October 10, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1966 234786 305